


# **COUNCIL TAX**

## **HANDBOOK**

**CHILD  
POVERTY  
ACTION  
GROUP**

**13TH EDITION**



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# Council Tax Handbook

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**13th edition**

**Alan Murdie, Susan Mitchell and Paul Moorhouse**

Child Poverty

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Child Poverty Action Group works on behalf of the more than one in four children in the UK growing up in poverty. It does not have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good. We provide training, advice and information to make sure hard-up families get the financial support they need. We also carry out high-profile legal work to establish and protect families' rights. If you are not already supporting us, please consider making a donation, or ask for details of our membership schemes, training courses and publications.

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The law described in this book was correct at 1 January 2021.

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# Abbreviations

AA	attendance allowance	HMRC	HM Revenue and Customs
CA	carer's allowance	IB	incapacity benefit
CTB	council tax benefit	IS	income support
CTC	child tax credit	JSA	jobseeker's allowance
CTR	council tax reduction	MP	Member of Parliament
CTRRP	Council Tax Reduction Review Panel	NI	national insurance
DCLG	Department for Communities and Local Government	PC	pension credit
DHP	discretionary housing payment	PIP	personal independence payment
DLA	disability living allowance	SDA	severe disablement allowance
DWP	Department for Work and Pensions	UC	universal credit
ESA	employment and support allowance	VOA	Valuation Office Agency
EU	European Union	VTE	Valuation Tribunal for England
HB	housing benefit	VTW	Valuation Tribunal for Wales
HMCS	HM Courts Service	WTC	working tax credit

# Chapter 1

## Overview

**This chapter covers:**

1. Introduction (below)
2. Administration (p2)
3. Legal background and references (p3)

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### 1. Introduction

This *Handbook* describes council tax as it operates throughout England, Wales and Scotland. It should be of value to taxpayers, advisers and administrators.

Council tax is best understood as a cross between a land tax and a personal tax. It is payable on domestic dwellings, which are ordinarily understood as properties in which people live.

It was originally introduced for the financial year beginning on 1 April 1993 by the Local Government Finance Act 1992,<sup>1</sup> and for all subsequent financial years, after the failure of the short-lived system of community charge, or 'poll tax', which operated in England and Wales between 1990 and 1993.<sup>2</sup> The scheme of the original 1992 Act has now been substantially altered by the Localism Act 2011 and Local Government Finance Act 2012. Council tax is levied on domestic dwellings, but the number of people and the type of people who are living in a dwelling affect the amount of tax to be paid and who should pay it. Increasingly, more emphasis is placed on the personal element of the tax than the property element. This *Handbook* provides a guide to the relevant rules.

What is classed as a dwelling is decided by the listing officer of the Valuation Office Agency (the assessor in Scotland).<sup>3</sup> S/he also determines the appropriate valuation band into which each dwelling is placed. This information appears in the valuation list as an entry for the address and the band it is awarded.

Council tax bills are normally calculated on the assumption that two adults occupy a property. Where there is only one resident, a 25 per cent discount (known as a 'variation' in Scotland) applies. In some situations, a discount may be available where there is more than one adult resident in a property but the second or extra adults fall into a number of prescribed classes – eg, they are

students or severely mentally impaired. Such individuals are classed as 'disregarded for discount'.

There are a number of differences in the way the council tax scheme operates in Scotland compared to England and Wales. In some chapters, these variations are indicated as they arise; in others, there are separate sections on the different arrangements.

One of the fundamental principles upon which council tax was originally conceived was that the poorest in the community would be protected by council tax benefit (CTB) covering up to 100 per cent of their council tax liability. Between 1 April 1993 and 31 March 2013, central government funded a nationwide CTB system for those on welfare benefits or low incomes.

On 1 April 2013, CTB was abolished and replaced by locally determined council tax reduction schemes. Local schemes have created new administrative functions within the council tax system, with councils being given powers equivalent to those which existed under specified social security legislation relating to council tax. Local authorities have increased financial autonomy and responsibility for support for pensioners, those on low incomes and on benefits. In England and Wales, the amount of support available in each area is decided by each individual local authority, and not on a national basis. As a result, the amount of support that a low-income taxpayer is entitled to receive can vary widely, so that the position of one low-income taxpayer in one part of England and Wales is no longer the same, or broadly equal to, that in another part of the UK. Over 300 different support schemes exist for authorities across England and 22 different schemes operate in Wales. All schemes must contain certain prescribed requirements but flexibility exists for local authorities to charge persons under 60 a fixed percentage of annual council tax regardless of income. As a result, many people who were entitled to 100 per cent benefit between 1993 and 2013 are liable to pay at least a proportion of the annual council tax on their homes. The position is more consistent in Scotland.

Domestic rates are still payable in Northern Ireland. This *Handbook*, therefore, does not apply to Northern Ireland.

During 2018/19, local authorities collected a total of £29.8 billion in council tax, irrespective of the year to which it related. This included £625 million in arrears. In addition, £195 million of uncollectable council tax was written off.

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## 2. Administration

In England and Wales, district councils, metropolitan districts and London boroughs, unitary authorities, combined authorities, the Common Council of the City of London and the Council of the Isles of Scilly are responsible for setting the council tax, as well as billing and collection in their area. Each authority collects council tax on behalf of itself and other bodies (known as 'precepting



authorities'). The authorities which issue the bills and collect the tax are known as '**billing authorities**'<sup>4</sup>

In Scotland, billing and levying is performed by local authorities. Scottish local authorities are legally obliged to collect Scottish Water charges (for household water and waste water). These charges are included in the annual council tax bill.

Although local authorities set and levy the council tax, in many areas the day-to-day administration and collection of council tax is carried out by private companies acting on behalf of the local authority. These companies may also be responsible for administering benefits and enforcing non-payment of tax or undertaking certain types of enforcement, most commonly the use of enforcement agents to seize goods or begin insolvency proceedings. In England, they can also notify applicants about reductions, ascertain liability and collect penalties.<sup>5</sup>

### 3. Legal background and references

The legal framework for the council tax is contained in the Local Government Finance Act 1992, as amended by the Local Government Act 2003, the Localism Act 2011 and the Local Government Finance Act 2012. The Act includes sections and Schedules that apply throughout England, Wales and Scotland, as well as sections and Schedules that apply exclusively to one or other of the two jurisdictions.

The Acts enable the Secretary of State, the Welsh government or the Scottish government to formulate legislation (statutory instruments) in the form of regulations which contain and amend the details of the scheme. In practice, it is these regulations that govern the operation of the council tax on a day-to-day basis. Some legislative provisions are shared in common between England, Wales and Scotland, while others have been created and put in place by the devolved governments in Wales and Scotland.

Most of the regulations have been amended since they were first made and others substituted. The original text of many of these regulations is available at [legislation.gov.uk](http://legislation.gov.uk) but subsequent amendments are not always included or updated to reflect the most recent changes.

Each local authority is required to draw up a council tax reduction (CTR) scheme which applies from the start of each financial year. With the exceptions of pensioners and certain prescribed categories of support set out in regulations made by the Secretary of State, each local authority is left to devise the support scheme and level of support for its own area as it sees fit for working-age people. Consequently, there is widespread variation between different councils and reference needs to be made to the appropriate local CTR scheme. These rules have legal effect and are binding on the authority.

Relevant caselaw is also identified in the appropriate paragraphs of this *Handbook*.

## **Appeals**

Decisions made by local authorities and the Valuation Office Agency may generate rights of appeal under Part I of the Local Government Finance Act 1992.<sup>6</sup>

In England, appeals from taxpayers may go to the Valuation Tribunal for England (VTE) or to the High Court. The VTE is administered by the Valuation Tribunal Service. The VTE received 2,200 appeals between 1 April 2019 and 31 March 2020.<sup>7</sup>

In Wales, appeals on valuations, banding and council tax are heard by the Valuation Tribunal for Wales (VTW). The VTW received 1,037 council tax appeals between 1 April 2019 and 31 March 2020.<sup>8</sup>

In Scotland, appeals and proposals to change valuation bands are heard by the valuation appeals committee. During 2018/19, 1,851 proposals were made by taxpayers to reduce their band.<sup>9</sup>

## **Electronic communication**

Under the Electronic Communications Act 2000, local authorities in England, Wales and Scotland may serve certain notices and information required for council tax by electronic means. These provisions require the agreement of the taxpayer and service upon an unauthorised third party would be insufficient to amount to valid service.<sup>10</sup> Information and notices may also be served electronically on local authorities by taxpayers, although to be effective in law the communication must be recorded on a local authority computer. Electronic communication can also be used to alter lists and for appeals.

## **Freedom of information**

The Freedom of Information Act 2000 (and in Scotland, The Freedom of Information (Scotland) Act 2002) enables anyone to seek and obtain information held by state bodies, subject to certain exceptions. The Act may be used to discover information about aspects of the council tax, both national and local, in addition to information which is already available to the public (such as the valuation list). If a request to supply information is unreasonably refused, an appeal can be made to the Information Commissioner. Not all information is available – eg, personal records.

Personal data held on computer can also be obtained under the Data Protection Act 2018.<sup>11</sup> The person who is the subject of the data can obtain copies of the information by way of a subject access request.

A further right of access to information on local authority decisions can be obtained under the Openness of Local Government Bodies Regulations 2014.<sup>12</sup>

## **Tax capping and referendums**

Under the Local Government Finance Act 1992, the Secretary of State could originally limit the amount of council tax set by individual local authorities

(known as ‘capping’). The government could use this power to instruct councils to set a lower budget if it considered their budget requirement and council tax to have exceeded what it considered a reasonable amount. When this power was exercised, the result was that lower bills might be issued to residents. The Welsh government still has the power to cap council tax rises in Wales.

In England, the Localism Act 2011 removed this power and instead introduced that any local authority in England (including police and fire authorities) must call a referendum if it wants to raise its council tax above a set threshold where an increase is deemed ‘excessive’.<sup>13</sup> What is deemed as ‘excessive’ is determined by a set of principles set annually by the Secretary of State.<sup>14</sup> Any amount which exceeds the relevant principle must be approved in a referendum of local voters.<sup>15</sup>

An authority proposing an excessive increase is also required to make substitute calculations, based on a non-excessive council tax level.<sup>16</sup>

### Provision for a council tax referendum

If a local referendum takes place and the majority of voters veto the increase, the substitute calculations have effect for the financial year.<sup>17</sup>

The referendum can be held at any time of the authority’s choosing subject to this being no later than a date in May or a date specified by the Secretary of State by order.<sup>18</sup> A local authority must publish a statement of reasons for the council tax increase at least 28 days before the date of the referendum.<sup>19</sup> The notice of such a referendum must be published no later than 25 days before the date of the referendum.<sup>20</sup> The poll is to be taken by a secret ballot. Proxy voting is permitted and assistance is allowed for disabled and illiterate voters who need help.<sup>21</sup>

The wording of the question for the referendum and the form of the ballot paper are prescribed by the Secretary of State in regulations and must explain the percentages and increase involved.<sup>22</sup>

If a local authority fails to hold a referendum on time, the substitute calculations have effect.

A referendum may be challenged on a limited number of grounds in an election court or by way of judicial review.<sup>23</sup>

### Impact of the coronavirus pandemic

The coronavirus pandemic has majorly impacted the ability of authorities to collect and recover council tax. Many authorities have suspended enforcement action with magistrates’ courts unable to sit and bailiffs unable to call. Some enforcement measures have continued where a local authority applies to use bankruptcy or charging orders against a defaulting taxpayer with assets, via the County Court or High Court using virtual link-ups to conduct hearings. The VTE and VTW have continued to hold sittings remotely by telephone or video conferencing.

The economic effects of the pandemic have affected many taxpayers whose incomes may have reduced due to furlough or unemployment. Hardship funds

have been set up in England, Wales and Scotland to provide council tax relief for vulnerable households (see p131 and p178).

## Practice notes and implementation letters

In addition to the legislation, the Ministry of Housing, Communities and Local Government (in England), the Welsh government and the local authority associations have together produced, and periodically revised, a series of 'practice notes'. These advise on the interpretation of the legislation and on administrative arrangements, and highlight a number of good practice points. There is no Scottish equivalent. The Ministry of Housing, Communities and Local Government also produces council tax 'implementation letters'. These advise local authorities about the latest changes in legislation or decisions of the courts. Points from the implementation letters are periodically included in revisions of the practice notes. While the legislation is binding on local authorities, neither the practice notes nor the implementation letters have the force of law and local authorities are not bound by them. Particularly useful comments from the practice notes are included in this *Handbook*. The Valuation Tribunal Service also issues a council tax guidance newsletter (*Valuation in Practice*), which may be consulted online, and a selection of guidance notes.

The VTE has issued a practice statement applying to the conduct of hearings and the procedures to be adopted with appeals. Best practice guidance has also been issued by the VTW. See p257 for more details.

## Notes in the Handbook

References to the law are given in notes at the end of each chapter. The notes usually begin with the letters E, W or S or a combination of these, indicating references to English, Welsh and/or Scottish law. The abbreviations used in the notes can be found in Appendix 4.

## Legal and other references

Local authorities publish details of their local reduction schemes for council tax which should be available online.

Statutes and regulations governing council tax are available online but are not updated. Butterworth's loose-leaf work, *Ryde on Rating and the Council Tax*, reproduces all the relevant English and Welsh legislation and the practice notes. Large public reference libraries should have this two-volume work.

The Ministry of Housing, Communities and Local Government issues periodic Council Tax Information Letters for local authorities on developments in law and accompanying guidance.

CPAG's *Housing Benefit and Council Tax Reduction Legislation* consolidates the legislation on CTR schemes in England, Wales and Scotland.



Shelter and the Chartered Institute of Housing produce *Help with Housing Costs, Volume 1: Guide to Universal Credit and Council Tax Rebates* (available from CPAG). *Atkin's Court Forms*, published by LexisNexis, covers forms typically used in council tax matters.

*Rating and Valuation Reporter* covers changes to council tax and reports decisions of the courts in valuation and local taxation matters. Other unreported decisions may be available on the LexisNexis website, a database of court decisions and law reports; some judgments are also available at [judiciary.uk](http://judiciary.uk).

Detailed information on proceedings in the civil and criminal courts, which may involve council tax matters, can be found in specialist works of law and procedure, published annually. Note that the rules of civil procedure which apply in the County Court and High Court do not have an equivalent in council tax proceedings in magistrates' courts. Details of appropriate procedures in the magistrates' court can be found in the annual *Stone's Justices' Manual*.

Policy changes and council tax research can be found on the Ministry of Housing, Communities and Local Government website.

Information on valuation matters and appeals can be found at the Valuation Office Agency website and the Valuation Tribunal Service website. The Valuation Tribunal Service website is regularly updated with summaries given in recent valuation tribunal decisions.

Individual local authority websites may also provide useful information on the payment and collection of council tax in local areas. It seems likely that the provision of information in this area will increase in the next few years, and some local authorities are developing schemes to share information with advice agencies, such as Citizens Advice, at a local level.

Reports of Ombudsman decisions are available at the Ombudsman websites for England, Wales and Scotland.

See Appendix 1 for the website addresses.

## Notes

### 1. Introduction

- 1 s1 LGFA 1992
- 2 s100 LGFA 1992
- 3 s17 LGFA 1992

### 2. Administration

- 4 **EW** s1 LGFA 1992
- 5 CTRS(DFE)(E) Regs

### 3. Legal background and references

- 6 ss16 and 24 LGFA 1992
- 7 Valuation Tribunal Service Statistical Release, *Non-Domestic Rating and Council Tax Appeals (England) 2019-2020*
- 8 VTW Annual Report 2019-2020
- 9 Scottish Assessors Association Annual Report 2018-2019
- 10 *UKI (Kingsway) Ltd v Westminster City Council* [2017] EWCA Civ 430
- 11 ss44-45 Data Protection Act 2018
- 12 The Openness of Local Government Bodies Regulations 2014 No.2095
- 13 s52ZB(2) LGFA 1992; Schs 5 and 6 LA 2011
- 14 s52ZC(1) LGFA 1992
- 15 s4ZA LGFA 1992
- 16 s52ZF LGFA 1992
- 17 s52ZH LGFA 1992
- 18 s52ZG LGFA 1992; The Local Authority (Referendums Relating to Council Tax Increases) (Date of Referendum) (England) Order 2013 No.2862
- 19 Reg 11 LA(CR)(CTI)(E) Regs
- 20 Sch 3 para 3 LA(CR)(CTI)(E) Regs
- 21 Sch 3 para 28 LA(CR)(CTI)(E) Regs
- 22 Sch 1 LA(CR)(CTI)(E) Regs as amended by the Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) (Amendment) Regulations 2013 No.409
- 23 Reg 20 LA(CR)(CTI)(E) Regs

## Chapter 2

# Chargeable dwellings

**This chapter covers:**

1. Chargeable dwellings (below)
2. Dwellings in England and Wales (p10)
3. Dwellings in Scotland (p19)
4. New and altered properties (p21)

## 1. Chargeable dwellings

Council tax is payable on any dwelling which is not exempt (see Chapter 4). Properties on which the tax must be paid are referred to as 'chargeable dwellings'.<sup>1</sup> The definition of a 'dwelling' is therefore fundamental for council tax purposes. The definition which applies in England and Wales differs from that which applies in Scotland. In the majority of cases, however, the effect is the same.

In most cases, whether or not a property constitutes a dwelling is not in question. Houses, flats, bungalows, cottages and maisonettes used for domestic purposes all normally count as dwellings. However, sometimes it may not be clear whether or not a property constitutes a dwelling. This might occur, for example, if one property consists of a number of dwellings or if a number of properties constitute one dwelling. Whether or not a property constitutes a dwelling is one of the grounds for making a proposal to alter the valuation list (see Chapter 3) and could be the subject of an appeal (see Chapter 11).

### *Reducing the amount of council tax payable*

The amount of council tax payable in respect of a dwelling may be reduced by:

- an alteration to the dwelling's valuation band (see Chapter 3);
- a fixed period or indefinite exemption (see Chapter 4);
- a disability reduction (see Chapter 6);
- a discount (see Chapter 7);
- council tax reduction (see Chapter 8);
- adopting certain payment arrangements, which may offer a discount (see Chapter 9);
- a discretionary reduction (see p177).

## 2. Dwellings in England and Wales

### What counts as a dwelling

The legal definition of a dwelling for council tax purposes in England and Wales is not straightforward. The Local Government Finance Act 1992 defines a 'dwelling' as any property which:<sup>2</sup>

- would have been a 'hereditament' (ie, a rateable unit – see below) for the purposes of section 115(1) of the General Rate Act 1967 if that Act had remained in force (see below); *and*
- is not shown, or required to be shown, on a local or a central non-domestic rating list (see p16); *and*
- is not exempt from local non-domestic rating;<sup>3</sup> *or*
- is a 'composite hereditament' (see p17).

### What is not a dwelling

The Act specifically excludes certain properties from being dwellings, unless they constitute part of a larger property which is itself a dwelling. These are:<sup>4</sup>

- a yard, garden, outhouse or other land or building belonging to, or enjoyed with, property used wholly for the purposes of living accommodation; *or*
- a private garage which either has a floor area of not more than 25 square metres or is used wholly or mainly to accommodate a private motor vehicle; *or*
- private storage premises used wholly or mainly to store domestic items.

These exclusions mean, for example, that a garage used to keep a private car that is not part of a larger property does not constitute a dwelling and should not be included in the valuation of any other dwelling. Although a room occupied by a concierge may be included as domestic property forming part of a collection of dwellings chargeable to council tax.<sup>5</sup>

In England, property may be included in the definition of 'domestic property' if it is used to generate electricity or heat by alternative energy sources (eg, biomass, biofuel, wind or water) to meet individual needs. However, it is not 'a dwelling' unless it forms part of a larger property which is itself a dwelling.<sup>6</sup>

### Hereditaments

The General Rate Act 1967 charged general rates on domestic and non-domestic property. Section 115(1) of that Act defined a '**hereditament**' as a 'property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate rate item in the valuation list'. The exact identity of the hereditament has been the subject of numerous legal cases. Prior to 2015, in the leading case on the issue in the Court of Appeal, Denning LJ said:<sup>7</sup>



Where two or more properties are within the same curtilage or contiguous to one another, and are in the same occupation, they are as a general rule to be treated for rating purposes as if they formed part of a single hereditament. There are exceptional cases, however, where for some special reason they may be treated as two or more hereditaments. That may happen for instance, because they were valued at different times, or because they were at one time in different occupations, or because one part is used for an entirely different purpose. Where the two properties are in the same occupation but are not within the same curtilage nor contiguous to one another, each of them must as a general rule be treated as a separate hereditament for rating purposes: and this is the case even though they are used by the occupier for the purposes of his one whole business.

A more fluid set of tests were adopted by the Supreme Court in 2015. In *Woolway v Mazars*,<sup>8</sup> the Supreme Court looked at the degree of connectedness between two offices of the same business operating on different floors of a building. It held that properties occupied by the same person or parties that were contiguous, but not interconnected (only accessible by passing through other property), were to be treated and taxed as two or more hereditaments. The main test is a geographical one, although a functional test may also apply. It ruled that adjacent spaces would normally possess the characteristic of being connected and treated as one hereditament, but unity was not simply a question of contiguity. If direct communication is possible between two occupied parts of a dwelling, by a door or a staircase, the occupier will usually be said to create a new and larger hereditament in place of the two which previously existed.

Where two spaces are geographically distinct, a functional test may still enable them to be treated as a single hereditament, but only where the use of the one section or unit is necessary to the effective enjoyment of the other. This is normally decided by whether the two sections can be let separately.

Whether the use of one section is necessary for effective enjoyment of the other does not depend on the needs of the occupier, but rather on the physical character of the property and its objectively ascertainable characteristics. The reasoning in *Woolway v Mazars* has been adopted with council tax.<sup>9</sup> It led to the introduction of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 which redefines a hereditament where two or more hereditaments are occupied or owned by the same person and meet certain conditions as to contiguity. Such hereditaments are to be treated for the purposes of non-domestic rating as one hereditament but this does not affect council tax. However, the position with two hereditaments which are mixed business and residential use and occupied by the same person has not yet been addressed.

## Dwellings in a state of disrepair

In some cases, a property may be in such a state of disrepair that it cannot be classed as a dwelling at all. It could be so derelict that even with a reasonable

amount of repairs, no one could be expected to live in it. Such a property ceases to be a hereditament and may be removed from the valuation list altogether.

When deciding whether a dwelling should be removed, a key test is whether a reasonable amount of repair work would make it habitable. If the answer is 'no', the dwelling can be taken off the list entirely. Past valuation tribunal decisions on this question show that the state of dereliction must be severe and it must be uneconomical to undertake repairs. A tribunal may establish that if it were unreasonable to undertake repairs and no reasonable owner would attempt them, the dwelling should be removed from the list.

**Note:** the actual intentions of the landlord or owner are not relevant. The tribunal looks at the actions of a hypothetical reasonable owner. Thus, an owner or landlord who is willing to spend more than what a reasonable person would to repair a property may still have the dwelling removed from the list for the period it is uninhabitable. For example, in one case, a valuation tribunal held that a dwelling with dangerous electrical wiring and lacking a gable wall should not appear in the valuation list while undergoing rebuilding.<sup>10</sup> The building was uninhabitable during rebuilding and failed to meet the definitions of a rateable hereditament. If a dwelling can be repaired, it should remain on the valuation list and may be entitled to an empty dwelling exemption for 12 months while the repairs are carried out. For more information on exemptions, see Chapter 4.

### **Self-contained accommodation and 'granny flats'**

If a dwelling is considered to be a single dwelling under the definition of a hereditament (see p10), but consists of more than one 'self-contained unit' of living accommodation, the local authority will treat each self-contained unit of accommodation as a separate dwelling.<sup>11</sup>

A '**self-contained unit**' is a building, or part of a building, which has been constructed or adapted for use as separate living accommodation.<sup>12</sup> Listing officers are advised to look for living and sleeping accommodation and at least minimal separate cooking and washing facilities before they decide that the property constitutes 'self-contained' living accommodation. For example, a property that contains more than one self-contained unit (eg, a large house that has been adapted to provide a separate 'granny' annex or provides separate staff accommodation) should be treated as two or more dwellings. The annex may then be an exempt dwelling if unoccupied (see Chapter 4). Key factors to be taken into account include whether a self-contained unit or annex has all the features necessary for independent living. The actual intentions of the parties are not decisive.<sup>13</sup>

If a living unit does not have independent outside access, it does not necessarily mean it is part of a single dwelling.<sup>14</sup>

The view of the occupier (eg, if s/he says that the accommodation is used as a games room rather than living accommodation) will not prevent a listing officer from deciding that a separate dwelling exists.

Identifying whether a dwelling constitutes a 'self-contained unit' takes part in stages. The listing officer must first determine that a hereditament exists and to what extent, and only then go on to consider whether the hereditament contains any self-contained units.<sup>15</sup>

The definition of a self-contained unit makes it clear there is a functional element (ie, that the unit in question was intended for use as accommodation), which would allow a consistent approach to the question of self-containment.

Determining whether parts of a building are self-contained units is an objective test of fact and degree in each case and includes the following considerations.<sup>16</sup>

- Is the part of the building identified reasonably suitable and fit for use as a self-contained dwelling?
- Are the physical characteristics of the dwelling, which may include services and fixtures, of reasonable suitability?
- What is the actual use of the self-contained part of the dwelling? While this may be relevant, it is not the key test and usually is not of significant weight in the assessment.
- What are the characteristics of the rest of the building and access?

The size of a dwelling is also relevant to determine whether it is suitable to be classed as self-contained accommodation, but the size of the areas in comparison to the rest of the building is not an issue.<sup>17</sup> Whether there is a door or a lock does not determine alone whether accommodation is self-contained or not,<sup>18</sup> but the existence of a door and its position may indicate that it has been constructed with a sufficient degree of privacy to be classed as self-contained.<sup>19</sup> *Council Tax Manual Practice Note 5* states:<sup>20</sup>

A self-contained unit should have facilities for living, sleeping, preparation and cooking of food and bathing facilities such as a bath or shower, wash hand basin and lavatory. However in exceptional circumstances the lack of a facility does not prevent a unit from being self-contained, for example, a unit having shared bathing facilities – *Clement (LO) v Bryant and Others* (2003 RA 133).

However, as a general rule the law also emphasises that a 'bricks and mortar' approach of objectivity is important concentrating on physical features which are present. In *Corkish v Wright*, the High Court emphasised the test is a physical one and failure of a valuation tribunal to identify its size and an absence of cooking facilities in its reasons meant that a finding of an annexe as separate living accommodation had to be quashed.<sup>21</sup>

If you are an 'interested person' (see p37), you can make a proposal (see p38) to the listing officer not to show your home as a separate unit of accommodation on the valuation list.

## **Buildings in multiple occupation**

The listing officer has the discretion to treat a property which would otherwise be considered to be two or more separate dwellings as a single dwelling if it:<sup>22</sup>

- consists of a single self-contained unit, or such a unit together with or containing premises constructed or adapted for non-domestic purposes; *and*
- is occupied as more than one unit of separate living accommodation.

The decision whether to treat a number of domestic properties as one chargeable unit or dwelling is known as 'aggregation'. Similarly, the decision to treat a single property as a number of smaller individual units is known as 'disaggregation'.

Aggregation can occur, for example, to a property occupied by more than one household, but where the residents share facilities such as kitchens or bathrooms – eg, a group of bedsits, a hostel, a care home or refuge.

Specific provision has been made for care homes.

With disaggregation, each of the deemed dwelling units must be capable of being lived in separately to be classed as a self-contained unit. The listing officer must exercise her/his discretion reasonably and should take into account all the circumstances of the case, including the extent to which the parts of the property that are separately occupied have been structurally altered. The overall exercise of discretion as to whether either a collection of units or a dwelling as a whole should be aggregated or disaggregated is that of the listing officer and can only be challenged by way of judicial review.<sup>23</sup>

However, the decision of what constitutes an individual self-contained unit within a dwelling can be challenged at the valuation tribunal, which means that each separate unit has to be challenged individually as a separate appeal. This may mean multiple appeals must be commenced in respect of a single dwelling when a disaggregation decision has been made (see Chapter 11).

The listing officer's decision that a property is, or should be treated as, only one dwelling rather than several may have an impact not only on the single dwelling's valuation band but also on liability and entitlement to discounts (also known as 'variations' in Scotland) or benefits and whether individual occupiers each receive bills, instead of the landlord. Such arbitrary decisions by the Valuation Office Agency or local authorities often cause problems for tenants or occupiers sharing multiple occupation dwellings who believe that they are paying for local taxes in their rent and that the landlord should be liable to pay on a house of multiple occupation basis. In one case concerning general rates, it was held that at least four factors should be considered by a valuation officer when exercising her/his discretion.<sup>24</sup> These are:

- the degree to which facilities, such as kitchens and bathrooms, are shared;
- the degree of internal adaptations, such as entrance doors;
- the degree of identifiably separate parts;
- the degree of transience in the occupiers' residence.

The higher courts have confirmed that the above principles continue to apply with the test that is sometimes referred to as the 'bricks and mortar test', by looking at the reality of what has actually been constructed rather than at the



intentions of the owner (see Chapter 5).<sup>25</sup> However, if two flats are converted to a single property, a new dwelling is created for council tax purposes.<sup>26</sup> The presence or absence of one characteristic is not normally determinative in itself, but an overall collection of features. It would be expected that a reasonable decision looking at all the facts would be taken.<sup>27</sup>

A problem is that decisions may often be made in respect of selected cases rather than with reference to the overall position. The current situation leaves the law in a state of some confusion with an accumulation of different decisions in the last 20 years.

Overall, to constitute a separate dwelling in shared accommodation, the unit must be suitable for use as a 'dwelling' in the ordinary sense of the word. It must be suitable to be treated as a place in which someone may live; will normally require a place to sleep, facilities for hygiene, and some provision of facilities for cooking, eating and drinking. For example, the absence of cooking facilities or a kitchen in a room which is en-suite would indicate that the room should not be classed as a self-contained dwelling, a view that was followed in *Coll v Mooney*<sup>28</sup> where the court held the test is whether a unit was 'reasonably suitable' as separate living accommodation.

It must be constructed as a 'single' dwelling and must have an element of separateness from other buildings or other parts of the same building. It must be capable of functioning as a dwelling in its own right and provide a form of privacy and security for the occupier. However, it appears from caselaw that there are no absolute rules as to how that separateness can be achieved. In 2001, the High Court considered an important factor was whether a flat was separated from the main residence of a house by a lockable door when deciding that they were both 'self-contained units' for the purpose of council tax.<sup>29</sup> However, in later cases the view was taken that a lockable door was not a necessary condition of a self-contained unit.<sup>30</sup>

In 2014, the High Court said: 'There are many different ways in which separateness (and a sufficient degree of privacy) can be achieved...for instance by stairs or simply by geographical separation.'<sup>31</sup> Consequently, the presence or absence of a lockable door is not determinative in itself.

In Wales, a refuge must be treated as a single dwelling for council tax purposes, even if the dwelling consists of more than one self-contained unit.<sup>32</sup>

Houses in multiple occupation have to be registered with the local authority (see Chapter 5) but a different definition applies regarding the number of people living in the property.

### Annexe property

As well as with multiple occupation properties, similar issues may arise where a property is extended or divided to create an annexe. The result of an extension is that the main property is likely to become a new dwelling for valuation purposes with the addition of the extension or annexe. The valuation officer can alter the

valuation band of the original property as well as valuing the extension separately if it constitutes a self-contained dwelling.<sup>33</sup> A similar approach to annexes treating physical characteristics, construction and reasonable suitability as key tests has been followed in cases in tax tribunals.<sup>34</sup> In some cases, an annexe may attract an exemption from council tax (see Chapter 4).

### Converted sheds and garages

In areas with high rents and a shortage of accommodation, some people have transformed sheds and garages into places to rent. Converted sheds and garages may be excluded from the category of 'dwelling' or may be part of the owner's dwelling. Even if they are treated as dwellings in their own right, in most cases it is likely that the owner will be held liable for the council tax (see Chapter 5).

### Caravans and houseboats

A pitch for a caravan and a mooring for a houseboat are hereditaments (see p10) and are, therefore, capable of being considered dwellings for council tax purposes if they are occupied by a caravan or houseboat (including a boat which is no longer navigable<sup>35</sup>) which is someone's sole or main residence (see p77). If not in use, even if the pitch or mooring is empty, it is still considered a dwelling if it appears that its next use will be domestic, but it may be an exempt dwelling (see Chapter 4). Boats and caravans may themselves be classed as hereditaments and treated as domestic dwellings. For a boat or a caravan to constitute a hereditament, the key question is the degree of permanence in its position. A boat in itself is outside the scope of a dwelling and is not taxable unless it is fixed or permanently moored.<sup>36</sup>

If a boat is moored at one spot or a caravan parked on the same pitch for a substantial period, its value may also be included in the valuation of pitch or mooring for banding purposes. Where a dwelling boat or caravan occupies a mooring or pitch for 12 months or more, the value of the boat or caravan should be included in the band value, even if it moves away for brief periods, of say, two to four weeks, provided it then returns to its original mooring or pitch.<sup>37</sup> The question to be asked is whether the occupation can be characterised as that of a 'settler' or 'wayfarer'. If the latter, then only the mooring or pitch should be valued.<sup>38</sup>

### Properties on the non-domestic rating list

Property is 'domestic' if it is used wholly for the purpose of living accommodation. The Secretary of State in England and the Welsh Minister in Wales has the power to amend or substitute the definition of domestic property.<sup>39</sup>

If it is not in use, it is still considered to be domestic property if its next use will be domestic. Most non-domestic property, such as business or industrial property, is shown on either the local or central non-domestic rating list. Such properties are not dwellings for council tax purposes, but are subject to non-domestic rates.

### **Holiday caravans and beach huts**

Holiday caravans and other caravans used for non-domestic purposes are subject to non-domestic rates. However, if you keep a caravan at home for use on holidays, you are not liable to pay non-domestic rates or council tax on it. Beach huts are also liable to be listed as chargeable dwellings.<sup>40</sup>

### **Holiday lets and timeshare property**

Property let out as holiday lets (eg, cottages) may be subject to either council tax or business rates depending upon how many days each year the accommodation is occupied. Holiday accommodation must be let for a minimum of 140 days in England and a minimum of 70 days in Wales to count as a non-domestic dwelling.<sup>41</sup>

Timeshare accommodation does not count as domestic property and is subject to non-domestic rates.

### **Composite hereditaments**

A property is a 'composite hereditament' if only part of it is used solely for the purpose of living accommodation. For example, some rooms in a property may be used only for business purposes and others used only for domestic purposes. Council tax is payable on the domestic portion and non-domestic rates are payable on the business portion. It is possible to appeal against a decision that a property is a composite hereditament, or against a decision on the proportion of a property that is used for domestic or non-domestic purposes. The key question is whether the character of a dwelling house has been lost.<sup>42</sup> For example, a dwelling in which a room or garage is predominantly used for business purposes may be classed as a composite hereditament. However, the fact that someone works from home does not necessarily create a composite hereditament. In *Tully v Jorgensen*, the appellant worked from home because her disability meant she was unable to travel to work on a daily basis. The room she used had not been structurally adapted for business use and contained normal domestic furniture. Outside of office hours, the room reverted to normal family use. No one visited for business purposes and if meetings were required, they took place elsewhere. Consequently, the room was part of the ordinary domestic accommodation of the household.<sup>43</sup>

When valuing a composite property, a listing officer is expected initially to value the property as a whole, and then apportion the relevant amount between domestic and non-domestic parts.<sup>44</sup>

When assessing the domestic portion of a composite hereditament, the listing officer must take into account the amount of the property that could reasonably be attributed to domestic use. The Court of Appeal has ruled that, provided the listing officer does so, s/he can value the domestic portion by any method s/he chooses and it is not necessary to value the whole composite hereditament first.<sup>45</sup>

## Short-stay accommodation

Where a hotel or business provides accommodation for short periods to individuals whose sole or main residence is elsewhere, the part of the property which is wholly or mainly used is a non-domestic hereditament and is liable to non-domestic rates.<sup>46</sup> Property may be classed as 'wholly' used even if not all of it is used or part of it is empty. Property which is not in use is domestic property 'if it appears that when next in use it will be domestic'.<sup>47</sup> The accommodation must not be commercial self-contained, self-catering accommodation. The definition of a business includes a property run by a charity.<sup>48</sup> However, small establishments such as guest houses are subject solely to council tax where:

- short-stay accommodation is provided for six people or less at any one time;
- the provider's sole or main residence is within the property; *and*
- the short-stay accommodation is subsidiary to the use of the property as a sole or main residence.

If you are housed in temporary bed and breakfast accommodation (eg, local authority homeless accommodation<sup>49</sup>), the liability for council tax falls upon the owner of the dwelling, not you (see Chapter 5).<sup>50</sup>

If a building or a self-contained part of a building is intended, in the coming year, to be available for letting commercially as self-catering accommodation for short periods totalling 140 days or more, it is not a domestic property and is not liable to council tax. In Wales, for there to be no council tax liability, such a property must also have been let as self-catering accommodation for at least 70 days during the previous year and have been available for letting for at least 140 days. Where such a property is let for less than 70 days over the previous year as part of a larger business with other lets at the same location or within very close proximity, in some circumstances it may not be a domestic property chargeable to council tax.<sup>51</sup>

## Dwellings in different locations

The location of a dwelling is a major determining factor in how much council tax is payable and whether it should be treated as one or more properties. Two properties which are occupied in common by the same person or body and used for one purpose, but which are geographically separated (eg, by a road or public street) or if there is not common possession of the whole area concerned, should normally be treated as two separate hereditaments.<sup>52</sup>

If a dwelling (including a dwelling that is part of a larger single property) falls within the area of two or more local authorities, or two or more parts of an authority's area, it should be treated as being in the area in which the greatest part of the dwelling is situated, or in terms of use, where the greater domestic value is situated.<sup>53</sup>



Where no part of a composite hereditament can reasonably be ascertained to have a domestic use of greater value than any other part, the area within which the dwelling is treated as being situated is determined by agreement between the billing authorities. If they cannot agree, the matter is determined by drawing lots.<sup>54</sup>

### 3. Dwellings in Scotland

In Scotland, a ‘dwelling’ means any lands and ‘heritages’ – ie, rights that exist with the land, such as farming and fishing rights:<sup>55</sup>

- which consist of one or more dwelling houses with any garden, yard, garage, outhouse or pertinent other area belonging to and occupied with the dwelling house(s); *and*
- which would, but for the fact that it is a dwelling, be entered separately in the valuation roll.

The valuation roll is now limited to recording the details of non-domestic and part-residential properties. Details of domestic dwellings are now contained in the valuation lists.

A Scottish dwelling includes:

- the residential part of part-residential property (see p21); *and*
- part of any premises that was apportioned on 1 April 1989 as a dwelling house.

It includes caravans, but only if they are a person’s sole or main residence. It is considered that principles applicable for council tax in Scotland are similar to those in England, although not identical.<sup>56</sup>

#### What counts as a dwelling

Certain types of property are explicitly included or excluded from the Scottish definition of a dwelling. The following properties are specifically included in the definition of a dwelling if, but for the fact that they were dwellings, they would be entered separately on the valuation roll:

- a garage, carport or car parking space wholly or mainly used, or last used, for private motor vehicles;<sup>57</sup>
- certain private storage premises used, or last used, wholly or mainly to store domestic articles (including cycles and other similar vehicles);<sup>58</sup>
- bed and breakfast accommodation operated on a commercial basis by a person living there for letting to no more than six people a night;
- student halls of residence which include shared facilities;

## Chapter 2: Chargeable dwellings

### 3. Dwellings in Scotland

- accommodation owned by the Ministry of Defence which is, or is likely to be, the sole or main residence of at least one member of the armed forces;
- school boarding accommodation;
- any part of a communal residential establishment with shared facilities for residents, including those parts of a hostel or care home (as defined for the purpose of a discount – see p115) which are used wholly or mainly as the sole or main residence of a person employed there. **Note:** the other parts of this type of accommodation in which the residents live are not dwellings, but are subject to non-domestic rates.

**Note:** some of the above dwellings are exempt from council tax (see Chapter 4).<sup>59</sup>

In determining what is a dwelling, a court or tribunal may consider both the physical characteristics *and* the use made of the property as relevant considerations.<sup>60</sup>

Whether a property ceases to exist as a dwelling is an objective question of fact and degree. Normally, where the only reason a dwelling house cannot be lived in is because it is undergoing repairs or alterations it will not ordinarily mean that it ceases to be a dwelling house for council tax purposes. However, 'there may be cases where the works to a house are so extensive and require to be so prolonged, or where they involve the essential physical characteristics of a house being lost, that the proper conclusion is that the property has ceased to exist as a dwelling house while the works are carried out.'<sup>61</sup>

### What is not a dwelling

Certain properties are specifically excluded from the Scottish definition of a dwelling, but may be subject to non-domestic rates. These are:

- certain huts, sheds and bothies which are no one's sole or main residence;
- certain self-catering holiday accommodation which is no one's sole or main residence;
- women's refuges (except any part which is the sole or main residence of an employee of the voluntary organisation managing the refuge);<sup>62</sup>
- timeshare accommodation.<sup>63</sup>

If a dwelling is served by a combined heat and power station, the pipes, risers and other plant connected with the power station are not treated as part of the dwelling (and so are ignored for valuation purposes), except insofar as they fall within the solum (upper soil), garden, yard or garage of the dwelling.<sup>64</sup>

Thus, all pipes and risers for the transport of water between a power station and a block of flats (or tenement) are not treated as part of all the dwellings in the tenement, insofar as these pipes and risers are not located in or on land pertaining to the tenement. If the power station benefits only the tenement, it (and all the associated plant) counts as part of each dwelling. They are allocated equally between the dwellings they serve.

## Buildings in multiple occupation

In Scotland, a house in multiple occupation includes dwellings that were not originally constructed or subsequently adapted for such use but are actually being used as a house in multiple occupation even if they are, at times, occupied by one person. These houses in multiple occupation must be formally registered with the local authority.<sup>65</sup>

## Part-residential property

Certain properties with a mixed domestic and non-domestic use (eg, nursing homes and hospitals – see p20 and p115) are divided into their relevant parts. The non-domestic element is entered on the valuation roll and the domestic element is entered on the valuation list and is treated as a dwelling for council tax purposes.

Premises that are used for commercial or sporting purposes (known as ‘**part-residential subjects**’) are treated differently. The property is shown on the valuation roll, but an apportionment note on the roll indicates the net annual value and the rateable value based on the residential and non-residential use of the property.<sup>66</sup> The residential part counts as a dwelling for council tax purposes.

**Note:** those parts of a refuge, hostel or care home (see p115) used as accommodation for residents rather than employees are specifically excluded from the definition of part-residential subject.<sup>67</sup>

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## 4. New and altered properties

A new dwelling may be created either by a new building or by the structural alteration of an existing property. A new dwelling is considered to come into existence for council tax purposes from the day a completion notice is served, or from the completion date contained on the notice, if later.<sup>68</sup> In the latter case, this is if a dwelling is not completed, but the local authority believes it is substantially completed and it can be completed within three months from the date the notice is served.

A new or altered dwelling does not require a completion notice once someone starts to live there.

If a new or altered dwelling is unoccupied, it may be exempt from council tax for a period (see Chapter 4). If a new dwelling is created by the structural alteration to a building, the former dwelling(s) is considered to have ceased to exist on the completion date.

## Completion notices

The local authority (in England and Wales) or assessor (in Scotland) may serve a completion notice on the owner of a building which has been completed or

which can reasonably be expected to be completed within three months.<sup>69</sup> This notice proposes a completion day for the building.

The proposed completion day becomes the actual completion day unless the owner appeals. Before the outcome of the appeal, the proposed completion day is treated as the actual completion day.

In deciding whether a completion notice should be issued, the question is whether the building is capable of occupation. The Lands Chamber of the Upper Tribunal has stated:<sup>70</sup>

The building is only a hereditament if it is ready for occupation...If the building lacks features which will have to be provided before it can be occupied for that purpose and when provided will provide part of the hereditament and form the basis of its valuation it does not constitute a hereditament and so does not fall to be shown in the Rating List. There is, in consequence, no scope for including in the List a building which is nearly, even very nearly, ready for occupation unless the completion notice procedure has been followed.

### Appealing against a completion notice

Any disagreement over the date on a completion notice can be raised in the first instance with the local authority (in England and Wales) or the assessor (in Scotland).

In England and Wales, appeals should be made directly to the Valuation Tribunal for England or the Valuation Tribunal for Wales within 28 days of the notice being sent (see p256).<sup>71</sup> An out-of-time appeal may be allowed if you have failed to meet this time limit for reasons beyond your control.<sup>72</sup>

In Scotland, an appeal must be lodged with a valuation appeal committee within 21 days of receiving the completion notice.<sup>73</sup> Do this by writing to the assessor, stating the grounds of the appeal and enclosing a copy of the completion notice.



## Notes

### 1. Chargeable dwellings

- 1 **EW** s4(1) and (2) LGFA 1992
- 1 **S** s72(6) LGFA 1992

### 2. Dwellings in England and Wales

- 2 s3(1) LGFA 1992
- 3 s66(1A) LGFA 1988
- 4 s3(4) LGFA 1992
- 5 *The Collection (Management) Ltd v Jackson* [2013] UKUT 166 (LC)
- 6 s3(4A) LGFA 1992 as defined in s66(1A) and s26(2) LGFA 1988 Climate Change and Sustainable Energy Act 2006
- 7 *Gilbert (Valuation Officer) v Hickinbottom & Sons Ltd* [1956] 2 All ER 101 (CA)
- 8 *Woolway v Mazars* [2015] UKSC 53
- 9 *Corkish (LO) v Berg* [2019] EWHC 2521 (Admin)
- 10 *Z Munter Farms Ltd v Pettitt* [2006] RVR 332
- 11 CT(CD)O
- 12 Art 2 CT(CD)O
- 13 *Re a Dwelling in London N2* [2015] RVR 157
- 14 *Vaziri v Listing Officer* [2006] RVR 329
- 15 *Rawsthorne (LO) v Parr* [2009] EWHC 2002 (Admin)
- 16 *Corkish (LO) v Wright and Hart* [2014] EWHC 237 (Admin)
- 17 *Re a Dwelling in London N2 Appeal* 5090649355/084CAD VTE [2015] RVR 157 per President Professor Graham Zellick
- 18 *Jorgensen (LO) v Gomperts* [2006] RA 300
- 19 *Ramdhun v Coll (LO)* [2015] RVR 89
- 20 VOA, CTM, Practice Note 5: Appendix 1: Case summaries relating to Disaggregation, para 2.5
- 21 *Corkish (LO) v Wright and Hart* [2014] EWHC 237 (Admin), para 32
- 22 **E** Art 4 CT(CD)O, as amended by care homes by The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) (Amendment) (England) Order 2003 No.3121
- W** Art 3A CT(CD)O
- 23 *Burtfield Estates Ltd v Dixon (LO)* [2016] Appeal No.0655664341/254CAD, 6 June 2016 VTE Vice President Martin Young; *Antopolski v VO* [2019] Appeal Case 826184/084, 6 January 2019, decision of VTE Registrar
- 24 *James v Williams* [1973] RA 305
- 25 *R v London South Eastern Valuation Tribunal and Neale ex parte Moore* [2001] RVR 94; *Baker (LO) v Gomperts* [2006] All ER(D) 1 July; *Listing Officer v Callear* [2012] EWHC 3697
- 26 *R v East Sussex Valuation Tribunal ex parte Silverstone* [1996] RVR 203
- 27 *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223
- 28 *Coll v Mooney* [2016] EWHC 485 (Admin)
- 29 *McColl v Sabacchi (LO)* [2001] EWHC 712 (Admin)
- 30 *Jorgensen (LO) v Gomperts* [2006] EWHC (Admin) 1885; *Ramdhun v Coll (LO)* [2014] EWHC 946 (Admin)
- 31 *Ramdhun v Coll (LO)* [2014] EWHC 946 (Admin) Haddon-Cave J
- 32 Art 3B CT(CD)O inserted by art 3 Council Tax (Chargeable Dwellings) (Amendment) (Wales) Order 2014 No.2653
- 33 *Corkish (LO) v Berg* [2019] EWHC 2521 (Admin)
- 34 *Fiander and another v Revenue and Customs Commissioners* [2020] UKFTT 190 (TC)
- 35 *Nicholls v Wimbledon Valuation Officer* [1995] RVR 171
- 36 *Chelsea Yacht and Boat Co Ltd v Pope* [2001] 2 All ER 409
- 37 VOA, CTM, Practice Note 7 – Application to Council Tax to Caravan Pitches and Moorings, para 6.2
- 38 *Reeves (LO) v Northrop (LO)* [2013] EWCA 362
- 39 **E** s66(9) LGFA 1988
- W** Government of Wales Act 2006; s66(2BB) LGFA 1988 as amended by article 2(4) of the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 No.628 (W.65)

- 40 *Lewis v Christchurch Borough Council*  
*Lewis v Vivian* [1996] RA 229
- 41 **E** s66(B) LGFA 1988  
**W** s66(2BB)(d)) LGFA 1988  
See also *Gaer Ltd (trading as Gaer Cottages) v Williams (Valuation Officer)* [2018] UKCUT 327 (Lands Chamber)
- 42 *Guthrie v Highland Region and Western Isles Assessor* [1995] RA 292
- 43 *Tully v Jorgensen (VO)* [2003] RA 233
- 44 *Listing Officer v Monmouth School* [2009] EWHC 2720 (Admin)
- 45 Reg 7 CT(SVD) Regs; *Atkinson and Others v Lord* [1997] RA 413
- 46 s66(2) LGFA 1988
- 47 s66(5) LGFA 1988; *Public Safety Charitable Trust v Milton Keynes Council* [2013] RA 275, per Sales J at para 37; *South Kesteven DC v Digital Pipeline Ltd* [2016] 1 WLR 2971, per Elias LJ at para 25
- 48 s66(8) LGFA 1988
- 49 Either under the Housing Act 1996 or the Children Act 1989
- 50 CT(LO) Regs
- 51 s66(2BB)(d) LGFA 1988, s66 as substituted by the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016 No.31
- 52 *Woolway v Mazars* [2015] UKSC 53
- 53 CT(SVD) Regs; see also VOA, CTM, Practice Note 10
- 54 Reg 3 CT(SVD) Regs, as amended by CT(SVD)(A) Regs

### 3. Dwellings in Scotland

- 55 s72 LGFA 1992
- 56 *Assessor, Tayside Joint Valuation Board v Appellant* [2017] CSIH 64
- 57 Reg 2(2) CT(Dw)(S) Regs
- 58 Reg 2(3) CT(Dw)(S) Regs
- 59 CT(DPRS)(S) Regs
- 60 *The Old Course Ltd v Fife Council Assessor* [2016] CSIH 40 Lands Valuation Appeal Court, Court of Session
- 61 *Assessor for Tayside Joint Valuation Board v M* [2018] SC 106
- 62 CT(D)(S) Regs
- 63 CT(Dw)(S) Regs
- 64 CT(Dw)(S) Regs 2010
- 65 Sch para 3 CT(LO)(S) Regs
- 66 s72(8) and Sch 5 LGFA 1992
- 67 CT(D)(S) Regs

### 4. New and altered properties

- 68 **EW** s17 LGFA 1992; Sch 4A LGFA 1988  
**S** s83(1) and Sch 6 LGFA 1992
- 69 **EW** s17 LGFA 1992; Sch 4A LGFA 1988  
**S** s83(1) and Sch 6 LGFA 1992
- 70 *Porter v Trustees of Gladman Sipps* [2011] UKUT 204 (LC)
- 71 **E** Reg 21(5) VTE(CTRA)(P) Regs  
**W** Reg 29(4) VTW Regs
- 72 **E** Reg 21(6) VTE(CTRA)(P) Regs  
**W** Reg 29(5) VTW Regs
- 73 **S** Sch 6 LGFA 1992

## Chapter 3

# Valuation

**This chapter covers:**

1. Who is responsible for valuations (below)
2. The listing officer's and assessor's powers (p27)
3. How dwellings are valued (p28)
4. Compiling and maintaining valuation lists (p33)
5. Inspecting the valuation list (p33)
6. Altering a valuation list (p34)
7. The valuation bands (p45)

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## 1. Who is responsible for valuations

### England and Wales

In England and Wales, the valuation of dwellings for council tax purposes is carried out by the Valuation Office Agency (VOA), which is part of HM Revenue and Customs (HMRC). There is a listing officer at the VOA for each local authority. The listing officer has various duties in relation to compiling and maintaining the valuation list, and is independent of the local authority.<sup>1</sup> The term '**listing officer**' in this *Handbook* refers to any listing officer and any other officer appointed by HMRC's commissioners to carry out their functions.<sup>2</sup> The term is interchangeable with 'valuation officer'.

Details of your local Valuation Office and listing officer can be found at [gov.uk/government/organisations/valuation-office-agency](http://gov.uk/government/organisations/valuation-office-agency) or by telephoning 0300 050 1501 (England) or 0300 050 5505 (Wales).

Most contact with the listing officer starts either by you contacting the VOA to make a proposal or by the listing officer writing to you indicating an intention to alter the valuation band in which your home or property is placed.

### Scotland

In Scotland, the **assessor** and any deputy assessor for each local authority decides which valuation band applies to each dwelling in the area.<sup>3</sup> The assessor is a professional valuer who must comply with any directions on valuations given by

HMRC commissioners.<sup>4</sup> The assessor is appointed and employed by the council.<sup>5</sup> Details of assessors can be found at [saa.gov.uk](http://saa.gov.uk).

## Appointees

The commissioners (in England and Wales) and the assessor (in Scotland) have the power to appoint other people (eg, private surveyors) to carry out valuations.<sup>6</sup> The commissioners and the assessor are able to supply these appointees with relevant information obtained under their various powers – eg, any survey report obtained for rating purposes.<sup>7</sup> If the person assisting with the valuation discloses that information for reasons other than valuation purposes under the provisions of the Freedom of Information Act 2000, data protection purposes or in legal proceedings, s/he may be imprisoned for up to two years and/or fined.<sup>8</sup>

## Complaints

If you are unhappy with a valuation decision and wish to appeal it, see p34 and Chapter 11.

### *Negotiating with the Valuation Office Agency*

You can raise questions on the banding of your dwelling or other entries in the council tax list with the listing officer. This discussion and negotiation may resolve the issues without the need for an appeal. Listing officers may agree a band on the strength of evidence and representations. All queries should be dealt with courteously and listing officers should not imply that it is not worthwhile for you to make an appeal.<sup>9</sup> If you are not satisfied with your treatment from a listing officer, a complaint may be made for maladministration. However, note that it is not possible for the listing officer to substitute different bands than those set by parliament or alter the principles on which valuations for council tax are made.

To complain about maladministration (as opposed to the actual decision) of any local listing officer, initially contact the office concerned. Maladministration which may give rise to a complaint includes delays in dealing with enquiries and letters, providing inaccurate or misleading information and bad service from a member of staff. See p295 for more examples. If the response to your complaint is unsatisfactory, you can ask for a 'tier two' review. If you are not satisfied with a tier two response you can put your case to the Adjudicator. The role of the Adjudicator is to review the handling of complaints brought against the Insolvency Service, HMRC and the VOA, and can recommend action to put matters right. The VOA will accept the Adjudicator's recommendations, unless there are exceptional circumstances. You can refer a complaint to the Adjudicator's Office in writing or by telephone (see Appendix 1). During 2019/20, the Adjudicator received 54 complaints about the VOA, upholding 13 per cent of those received.<sup>10</sup>



If you are unhappy with the Adjudicator's recommendations, you can complain to the Parliamentary and Health Service Ombudsman. Contact your MP if you are pursuing a complaint with the Parliamentary and Health Service Ombudsman.

In Scotland, a complaint may be made to the Valuation Joint Board using the complaints form. If you are still dissatisfied at the end of the procedure, you can complain to the Scottish Public Services Ombudsman (SPSO).

The SPSO is the final stage for complaints about most public bodies that provide public services in Scotland. The SPSO will only consider a complaint after you have completed the assessor's complaints procedure. Complaints must be made to the SPSO within 12 months of when you became aware of the matter subject to complaint.

## 2. The listing officer's and assessor's powers

The listing officer and assessor have powers to:

- enter dwellings; *and*
- obtain information from a past or present owner, occupier, the local authority and certain other people.

### Desktop assessments

Except in the case of large premises or multiple units of property, the listing officer may only undertake a 'desktop' assessment or estimate of value, based upon records held by the Valuation Office Agency and existing entries on the list, rather than conduct a physical inspection. If you think this leaves the listing officer with less information on which to base an assessment, you may invite her/him to conduct a physical inspection of the property, but s/he cannot be compelled to do so. The failure to conduct a physical inspection may be raised in an appeal if the reliability of the assessment is questioned.

### Powers of entry

A listing officer and any assistant with written authorisation from the listing officer (in Scotland, the local assessor or deputy assessor) may enter, survey and value a dwelling.<sup>11</sup> You may invite the listing officer to inspect your property or the listing officer may exercise her/his right to do so. At least three clear days' written notice must be given. In England, the power can only be exercised where the officer has first obtained approval from the First-tier Tribunal before exercising the power.<sup>12</sup> This power is seldom, if ever exercised. The three-day period excludes weekends and public holidays. Normally, the official concerned should try to arrange a suitable time for access and give you at least seven days' notice.

Listing officers carry identity cards and will ask your permission to take photographs.<sup>13</sup>

If you intentionally delay or obstruct the official, you may be liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.<sup>14</sup>

### **The owner's and occupier's duty to provide information**

The listing officer or assessor may require the present or past owner or occupier of a dwelling to supply information to assist her/him to carry out the valuation.<sup>15</sup> If the information is in the owner's or occupier's possession or control, it should be supplied within 21 days of a written notice being served. Failure to comply, without reasonable excuse, may result in a fine of up to level 2 on the standard scale.<sup>16</sup>

A current or past owner or occupier could be fined up to £1,000 if s/he makes a false statement.<sup>17</sup>

### **The local authority's duty to provide information**

The listing officer or assessor may require the local authority to supply information about a property to assist her/him to carry out the valuation. In addition, if any information comes to the notice of a local authority, which it considers would assist the listing officer or assessor in her/his duties, it should provide that information.<sup>18</sup> In practice, the local authority will identify new dwellings and refer existing ones that have been altered. This duty could extend further to share information which will assist taxpayers as well as billing by the authority.

### **Right to use other sources of information**

Certain other individuals and organisations, such as the former community charge registration officer and, in Scotland, the district council, must also supply information if the listing officer or assessor requests it.<sup>19</sup> A listing officer or assessor may also take into account any other information available from other sources.

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## **3. How dwellings are valued**

In England and Scotland, each dwelling is valued on the basis of what it might reasonably have been expected to realise on the open market, subject to certain valuation assumptions, if sold on 1 April 1991 by a willing seller.<sup>20</sup>

When valuing a property, the question asked is: 'What was this dwelling worth on 1 April 1991, assuming there was a buyer available and the valuation assumptions applied?' (see p29).

The use of 1 April 1991 for valuations has meant that adjustments for changes in prices over time have not had to be made. However, with changes in property

prices since 1991, the construction of many new dwellings and the alteration of others, an assumed valuation date of 1 April 1991 has become harder to justify or maintain. As a result, the Local Government Act 2003 introduced a 10-year cycle of revaluations, but the process has so far only been completed for Wales. In Wales, a revaluation of dwellings was completed on 1 April 2005, using the relevant date of 1 April 2003.

Plans for a general revaluation in England were abandoned when the Council Tax (New Valuation Lists for England) Act 2006 was passed. This removed the requirement for a revaluation to be undertaken every 10 years, and future revaluation dates will be set by regulations. At present, the government has no plans to undertake a revaluation in England and council tax valuations will continue to be made based on a theoretical sale price on 1 April 1991.<sup>21</sup>

## Theoretical and actual value

The valuation for council tax purposes represents a *theoretical* value of what the property was worth on the relevant date (see above), not its actual value. (In Scotland, this may be referred to as the 'statutory hypothesis'.<sup>22</sup>) Thus, a dwelling which, in reality, may have been in a bad state of repair is treated as though it had been in a reasonable state of repair, as this is one of the valuation assumptions applied to all dwellings regardless of the circumstances. Similarly, fixtures inside a dwelling are ignored – eg, it makes no difference whether there is a modern kitchen installed or no kitchen fittings at all. A council tax valuation must be made applying all the theoretical assumptions, regardless of what the actual situation was or might be today. The consequences of this are that the *actual price* that a property achieved when put on the market in 1991, or since, will not be its value for council tax purposes unless the two figures happen to coincide. An actual sale price would simply count as evidence towards what a property was worth for the purposes of a council tax banding valuation, applying the valuation assumptions.

A dwelling built since 1991 has to be valued by imagining it as if it had existed in 1991 and then applying the valuation assumptions to it to determine what it was worth. From this theoretical valuation, the dwelling is then allocated within a valuation band.

## The valuation assumptions

To make all valuations on a common basis, properties are not only assessed on the basis of their market value on 1 April 1991 in England and Scotland (1 April 2003 in Wales), but are also subject to certain valuation assumptions. The factors that affect the market value of a property include the number of rooms, its age, the construction materials used, the presence of a garden and the nature of the neighbouring environment. Many factors can affect value, and once these have

been taken into consideration, the following statutory valuation assumptions are then applied.

#### **Valuation assumptions**

- The sale is with vacant possession.
- In England and Wales, a house is sold freehold and a flat (ie, part of a building divided horizontally to provide living units) is sold on a lease for 99 years at a nominal rent.
- In England and Wales, the dwelling is sold free from any rent charge (ie, rare rental payments on freehold land usually associated with covenants) or other duty or obligation.
- In Scotland, the dwelling is sold free from any 'heritable security' – ie, any mortgage is paid off.
- The size, layout and character of the dwelling, and the physical state of its locality, are the same as on the day the valuation was made.
- The dwelling is in reasonable repair.
- If there are common parts (eg, a shared hallway), these are in a reasonable state of repair considering the age and character of the dwelling and its locality, and the purchaser is liable to contribute to the cost of keeping them in such a state.
- Fixtures designed for a person with a physical disability, which increase the value of the dwelling, are ignored.
- The dwelling's use is permanently restricted to use as a private dwelling.
- The dwelling has no development value other than that attributable to any development for which no planning permission is required.

**Note:** the above assumptions are applied, whether or not they exist in fact.<sup>23</sup> The fact that a flat may be in shared ownership does not prevent it being valued as if a 99-year lease has been granted to a single owner.

While the effect of a rent charge will be disregarded, other forms of covenant which may affect a property may be considered when it is valued.<sup>24</sup> The effect of any shared ownership scheme which may apply to a flat is disregarded.<sup>25</sup>

For former council property which is sold under right-to-buy legislation, the valuation figure will not be the actual sale price. The listing officer or the district valuer in Scotland will look at the pre-discount value and/or to subsequent open market sales of comparable dwellings rather than use the discounted price or a form of shared ownership lease as the basis of valuation.<sup>26</sup>

### **Reasonable repair**

The dwelling is presumed to be in a reasonable state of repair, regardless of whether it is or not.

However, a distinction may be drawn between a dwelling which is in need of repair and a dwelling which is in such a poor state that it should no longer be



classified as a dwelling or hereditament (see p10), and should no longer be on the valuation list.

There may come a point at which a property is so derelict as to be incapable of repair.<sup>27</sup> A valuer or tribunal must avoid confusing the concept of the existence, or continued existence, of a hereditament on the one hand, from the separate question of the proper valuation of a hereditament on the other. If a dwelling is in such a state of disrepair that it cannot be classed as a hereditament, it should be removed from the valuation list. Listing officers are expected to ask the question: 'Having regard to the character of the property and a reasonable amount of repair works being undertaken, could the premises be occupied as a dwelling?'<sup>28</sup>

If the answer is no, the dwelling should be removed from the valuation list. If it is yes, it should be valued using the assumption that it is in a reasonable state of repair.

Similarly, in Scotland the view has been taken that:<sup>29</sup>

'...when determining whether subjects are, or remain, a dwelling it is not correct to treat them as if they are in a state of reasonable repair if in fact they are not. The assumption...does not apply at that stage. Rather, regard has to be had to the subjects' actual state and existing use.'

A mere incapacity to be lived in for a temporary period while repairs or other alteration works are being carried out is not necessarily enough to cause a property to cease to be a dwelling.<sup>30</sup>

### **Fixtures for a person with a disability**

'Fixtures' are items permanently attached to a dwelling, such as a sink, toilet or lift. The value of fixtures should be ignored in the valuation if they:<sup>31</sup>

- are designed to make the dwelling suitable for use by a person with a physical disability; *and*
- add to the dwelling's value.

In other words, the dwelling is valued on the basis that those fixtures are not present. There is no requirement for someone with a disability to live in the dwelling. Such fixtures may have been taken into account during the valuation process. If this is the case, the listing officer or assessor should be advised of this possible oversight.

However, the presence of fittings and adaptations may be relevant to obtaining a reduction in valuation (see p35). There is also a separate disability reduction scheme (see Chapter 6).

### **Dwellings with mixed domestic and business use**

In England and Wales, properties which include both a domestic and non-domestic component (known as 'composite hereditaments' – see p17) are valued on the proportion of the market value which might reasonably be attributed to

the domestic use of the property. The valuation is based on the same rules and assumptions outlined above, except that the assumption that the property is permanently restricted for use as a private dwelling is ignored.

### **Scottish farmhouses, crofts and fish farms**

In Scotland, dwellings such as farmhouses or cottages and croft houses connected with agriculture or fish farms are valued on the assumption that their availability is restricted to being used in that way. This lowers the value of the property and may lead to it being placed in a lower valuation band. When valuing a dwelling for council tax, the effect of a planning condition restricting occupation to a person mainly employed on a farm must not be ignored.<sup>32</sup>

## **Proposals and appeals on valuations**

The use of valuation assumptions (see p29) means that a dwelling's valuation band may not reflect its actual sale price in 1991 (2003 in Wales). Consequently, the actual selling price would not necessarily be useful evidence to support a proposal to alter its value on the valuation list (see p34) or at a valuation tribunal or a valuation appeal committee hearing, unless the actual sale price happened to match the council tax valuation using the statutory valuation assumptions.

The valuation assumptions are applied whatever the condition of the dwelling (but see below if energy efficiency measures have been added). Thus, a valuation for council tax purposes may differ from a valuation for any other purpose. The assumptions are applied in every case regardless of the actual circumstances on the relevant day (ie, 1 April 1991 for England and Scotland, and 1 April 2003 for Wales) and used by valuation tribunals and valuation appeal committees and the High Court and Court of Session when considering appeals against banding decisions.

To be successful, a proposal to alter a dwelling's banding or an appeal must apply the assumptions described on p29.

### **Energy efficiency measures**

The addition of energy efficiency or renewable energy measures, such as ground source heat pumps, insulation or solar panels, affect the value of a dwelling for council tax purposes. If the property is sold and the measures have increased the value of the dwelling into the next council tax band level, it is possible to change the dwelling's valuation. However, in practice, only substantial improvements would be likely to move a property up a band on its sale, and energy efficiency measures in isolation are unlikely to do so or will be disregarded.<sup>33</sup>

## 4. Compiling and maintaining valuation lists

The listing officer or assessor is responsible for compiling and maintaining each local authority's valuation list.<sup>34</sup>

### Compiling the list

In **England and Scotland**, the valuation list in operation was compiled on 1 April 1993 and came into force on that day. In **Wales**, the current list came into force on 1 April 2005.

Any new lists must, as far as is reasonably practicable, be accurate on the date on which they are compiled, and so properties must be revalued before the publication of each list. As soon as is reasonably practicable after its compilation, a copy should be sent to the local authority. The local authority should deposit this at its principal office.<sup>35</sup>

### Maintaining the list

The listing officer or assessor must accurately maintain the list for as long as is necessary for the purposes of council tax.<sup>36</sup> The listing officer or assessor notifies the local authority on a regular basis of any alterations to the compiled list to take account of new dwellings, demolitions, successful appeals and other changes. The valuation officer also has an implied power to alter the list.<sup>37</sup>

## 5. Inspecting the valuation list

Everyone has the right to inspect the valuation list and an online version is available. Access to this information must be provided free of charge and at a reasonable time and place.<sup>38</sup>

You can check the council tax banding of an individual property and inspect the valuation list in England and Wales online by providing the address, postcode and billing authority area on the Valuation Office Agency website at [gov.uk/government/organisations/valuation-office-agency](http://gov.uk/government/organisations/valuation-office-agency). Valuation lists for Scottish local authorities are at [saa.gov.uk](http://saa.gov.uk).

You can make copies of the list. Alternatively, you can request that the local authority, listing officer or assessor supply a copy, but a reasonable charge may be made for this service. If you are intentionally obstructed from exercising your rights in relation to the valuation list, the person responsible for the obstruction may be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.<sup>39</sup>

## What the valuation list shows

A valuation list must show the items identified below.<sup>40</sup> The list does not contain any personal information. The omission from a list of any matter which should be included does not make it invalid.<sup>41</sup>

### *The contents of a valuation list*

- Each dwelling in the local authority's area.
- Each dwelling's valuation band.
- A reference number for each dwelling.
- A marker indicating properties with mixed domestic and non-domestic use (England and Wales only).
- The effective date on which there has been an alteration.
- An indicator showing that an alteration has been made following an order of a valuation tribunal or a valuation appeal committee or the High Court or Court of Session.
- Notes indicating that a dwelling is a private garage or domestic storage premises (Scotland only).

There is no statutory requirement for how the contents of the valuation list should be laid out. Listing officers and assessors typically order their lists alphabetically, by postal towns, then by streets within each town. Within each street, numbered addresses are shown first, then named-only addresses in alphabetical order. Addresses which cannot be allocated to any street are shown at the end of the list of addresses in each postal town under the heading 'within billing authority area'. Addresses that are not allocated to a postal town appear at the end of the list.<sup>42</sup>

## 6. Altering a valuation list

A current valuation list can be altered by the listing officer or assessor following:

- the receipt of a proposal from an interested party or the local authority; *or*
- a successful appeal to the Valuation Tribunal for England (VTE), Valuation Tribunal for Wales (VTW), valuation appeal committee in Scotland, or to the High Court or Court of Session.

A dwelling's valuation band may be altered if:<sup>43</sup>

- the listing officer or assessor is satisfied that the valuation band is incorrect – eg, because of a clerical error; *or*
- the listing officer or assessor is satisfied that the dwelling would have been allocated to a different valuation band had the valuation been carried out correctly; *or*



- there has been a ‘material increase’ (see below) in the value of the dwelling since it was placed on the list and all, or part, of it has been sold or let on a lease for a term of seven years or more; *or*
- there has been a ‘material reduction’ (see below) in the value of the dwelling; *or*
- part of the property has started to be used, or is no longer used, for business purposes, or the balance between business and domestic use has changed; *or*
- there has been a successful appeal against the valuation band shown on the list; *or*
- the listing officer has made an earlier determination of a band but is subsequently satisfied that the banding decision was wrong, including a historical inaccuracy.<sup>44</sup>

The Valuation Office Agency (VOA) should usually tell you within two months if it has decided to alter the list.

### **A ‘material increase’ in the dwelling’s value**

A ‘material increase’ in the value of a dwelling means any increase which is caused (in whole or in part) by any building or other works.<sup>45</sup> This applies to work which either increases the size of the property or adds to its market value. However, the material increase only has an impact on the valuation once the dwelling (or any part of it) has been sold. In England and Wales, this also applies if the dwelling is let on a lease for seven years or more. In England, it does not apply to the installation of plant or equipment for the generation of electricity or the production of heat by a source of energy or a technology included in section 26(2) of the Climate Change and Sustainable Energy Act 2006 where:<sup>46</sup>

- the majority of the electricity or heat is generated or produced for use of persons in the dwelling; *or*
- the electricity/heat generated has a capacity not exceeding 10 kilowatts or 45 kilowatts thermal.

In England, the increase takes effect on the council tax banding from the day the alteration is entered on the list.<sup>47</sup> In Scotland and Wales, it takes effect from the date the sale or lease was completed.<sup>48</sup>

Even if a dwelling has not been sold or let on a lease of seven years or more, if a revaluation takes place in England in the future (see p28), all material increases will be taken into account in setting the banding for the dwelling concerned.

### **A ‘material reduction’ in the dwelling’s value**

A ‘material reduction’ in the value of a dwelling should lead to an immediate revaluation. This, if sufficiently significant, also leads to an immediate rebanding

of the dwelling. This only applies, however, if the material reduction is caused (in whole or in part) by:<sup>49</sup>

- the demolition (but not partial demolition during other building or engineering work) of any part of the dwelling; *or*
- any change in the physical state of the dwelling's locality; *or*
- any adaptation of the dwelling to make it suitable for a person with a physical disability.

Changes in the physical state of a locality give the greatest scope for proposals to change a dwelling's valuation band – ie, so-called 'blighting'. Such changes include, for example, a change in the character of the immediate environment brought about because of a road-widening scheme, the deterioration of surrounding property or a change in the use of nearby business premises.

The reduction in value should post-date the entry of the dwelling on the valuation list. In one case it was pointed out:<sup>50</sup>

'...[in] some cases the reduction may follow very swiftly upon the change, in other cases it may not do so. It may take time after the change is known about before the impact of it is realised and it begins to affect the prices which people are prepared to pay for the affected dwellings.'

In England and Wales, a reduction in value takes effect from the day on which the circumstances that caused the reduction arose. However, if that day cannot be reasonably established, the alteration takes effect from the day the proposal (see p37) was served on the listing officer or, in any other case, from the date it was entered on the list.<sup>51</sup>

In Scotland, a material reduction takes effect from the date the value fell sufficiently to affect the property's banding or the start of the financial year in which the proposal is made, whichever is later.<sup>52</sup>

## **How dwellings are revalued**

The listing officer is under a duty to alter the valuation list where it is inaccurate.

When one of the conditions for the potential alteration of a dwelling's valuation band exists, there should be a revaluation. This should be made on the basis of the rules and assumptions on p29.

In England, this means that the dwelling's value, taking into account its current state, is still based on what it would have sold for on the open market on 1 April 1991.<sup>53</sup> If the change in value is only small, it might not be sufficient to move a dwelling from one valuation band to another.

In exercising powers to alter the valuation list, the listing officer is entitled to take into account any evidence capable of showing what the accurate valuation of a dwelling was, regardless of when that evidence arises. This may include evidence of relevant sales post-dating 1 April 1991 and evidence of which arises after 1 April 1993.<sup>54</sup>

In Scotland and Wales, a material increase is assessed on the date the sale or transaction took place. In the case of a material increase in the value of the dwelling, the date of alteration takes effect from the date of the transaction, even if the increase is not identified for several years. The effective date of the alteration should be the day on which the first sale of the dwelling subsequent to the material increase is completed, not the date that you were informed or an assessor discovered it. If the change in value is only established some while after the first date of sale, the liable person may be faced with a backdated bill.<sup>55</sup>

If a dwelling ceases to be a composite hereditament, if there is a reduction in the domestic use of a dwelling or if a new dwelling comes into existence, the relevant date is the date of the alteration to the property. If a number of changes have taken place, the change in the valuation list is taken from the date of the last change.<sup>56</sup>

## Obtaining an alteration

If a list is inaccurate, a 'proposal' may be made to the listing officer or assessor for an alteration to the list. In many instances, there are time limits for this (see below). Making a proposal is also the first stage in the appeal process (see Chapter 11).

### Who can make a proposal

Any 'interested person' can make a proposal to alter the list. An 'interested person' on any particular day is:<sup>57</sup>

- the owner of the dwelling;
- anyone who is liable (either solely or jointly) to pay the tax on the dwelling;
- in the case of an exempt dwelling (see Chapter 4) or a dwelling on which the council tax has been set at nil, the person who would otherwise be liable to pay the tax.

Local authorities in England can also make proposals to the listing officer.<sup>58</sup>

If you get council tax reduction (see Chapter 8), you are entitled to make a proposal to change the banding of the property.

### Time limits

A proposal may be made at any time if:

- a property should be excluded from, or included on, the valuation list;<sup>59</sup>
- there has been a material increase (see p35) in the value of a dwelling and a relevant transaction;
- there has been a material reduction (see p35) in the value of a dwelling;
- part of a property starts to be used, or is no longer used, for business purposes, or the balance between business and domestic use has changed.<sup>60</sup>

In the following circumstances, however, there is a time limit in which to make a proposal.

- **Proposals concerning a valuation band on the original list.** Except in limited circumstances, the time limit to make a proposal has now expired.
- **Banding proposals made by a new resident/owner or concerning a new property.** A proposal can be made within a six-month period if:
  - someone first becomes liable for the council tax on a particular dwelling; *or*
  - the dwelling (eg, a new home) is first shown on the valuation list after 1 April 1993 (1 April 2005 in Wales).<sup>61</sup>

Such a proposal cannot be made, however, if:

- it is based on the same facts that have already been considered and determined by the VTE, VTW or valuation appeal committee in Scotland, or by the High Court or Court of Session; *or*
- the new taxpayer is a company which is a subsidiary of the preceding taxpayer; *or*
- the preceding taxpayer is a company which is a subsidiary of the new taxpayer; *or*
- the change of taxpayer has occurred solely because a new partnership has been formed and one of the partners was a partner in the previous partnership.<sup>62</sup>
- **Appeal decisions concerning a comparable dwelling.** A proposal may be made within six months of an appeal decision on another comparable dwelling if this gives reasonable grounds for arguing that the valuation band of the dwelling in question should be changed.<sup>63</sup>
- **Proposals concerning an alteration to the list.** If the listing officer or assessor has altered the list in respect of a dwelling, a proposal can be made within six months from when the notice of the alteration was served.<sup>64</sup> The time limit may not apply where a delay by either the billing authority or the valuation office has meant a historical inaccuracy has arisen in the list.<sup>65</sup> In Wales, an inaccuracy in the list may be corrected by the listing officer where an alteration to the list is made to correct an inaccuracy and the inaccuracy is that the original list showed the valuation band as being too high. The alteration has effect from the later of the day on which the list was compiled and the day six years earlier than the day on which the alteration is entered in the list.<sup>66</sup>

## Making a proposal

You must make the proposal by writing to the listing officer at the local office of the VOA (the address should be on the council tax bill) or the local assessor.<sup>67</sup> Standard forms and explanatory notes are available from these offices to assist with the proposal. The completed form or, alternatively, a letter should contain all relevant information including:<sup>68</sup>

- your name and address;



- the capacity in which the proposal is being made – ie, whether you are the liable person or the owner of the dwelling;
- the dwelling to which it relates;
- the date;
- the way in which you propose the list should be altered;
- the reasons for believing the list to be inaccurate, the relevant facts, any evidence supporting those facts and any relevant dates, such as the date you first became the liable person or the date when a material reduction in the dwelling occurred.

**Note:** while you are awaiting the listing officer's decision, you are usually expected to pay council tax. However, if you do not think you should be paying council tax at all, as your proposal is that the dwelling should not be on the valuation list at all, but you have been billed for council tax, you should also contact the local authority and inform it that you are also challenging liability to the tax.

### **Example**

Ted has proposed that his dwelling should not be on the valuation list at all as it is a room which actually forms part of a house of multiple occupation. Ted disputes both the bill and liability to tax under section 16 of the Local Government Finance Act 1992 as it is the owner who is liable (see Chapter 5). Ted can appeal the local authority decision to the valuation tribunal (see Chapter 11). If the local authority starts enforcing the bill because he has not paid and he is summonsed to the magistrates' court, Ted should seek an adjournment on the basis that he has begun the appeal process (see Chapter 10).

The proposal should be addressed to the listing officer or assessor for the relevant area and delivered or posted to the appropriate address. Keep a copy and obtain proof of postage, online confirmation or, if delivered by hand, a receipt.

If you are acting on behalf of another council taxpayer to challenge a council tax band, the VOA expects you to:

- provide a form of authority to act on the taxpayer's behalf, which must be signed and dated by her/him not more than six months before it is supplied;
- check whether you are entitled to make a valid proposal on the proper form, either on the internet or supplied by the local valuation office;
- provide relevant evidence to raise doubt over the accuracy of the band;
- supply a completed property details questionnaire.

### **Evidence**

A wide range of evidence can be used to establish value. You can include a plan of the property and photographic evidence. You can use sales evidence for up to two years either side of 1 April 1991 for your property or similar properties in your locality. Evidence that similarly sized properties to yours are in a lower band may

be used. There must be no more than a 10 per cent difference in size comparison between these properties and yours. Evidence of significantly larger properties within the locality in a lower band may also be accepted. No more than five comparable properties should normally be supplied – if you supply more than this, only the first five are likely to be considered as part of the case. Evidence of the value of other properties with different characteristics may also be introduced and considered (eg, a property with a lease of 125 years instead of 99), it being presumed that the listing officer or the valuation tribunals will use expertise to take into account such evidence and will make adjustments when applying the valuation assumptions.<sup>69</sup>

Normally a proposal can only deal with one dwelling. In England, however, a proposal can be made for more than one dwelling if:<sup>70</sup>

- you make the proposal in the same capacity (eg, as the owner) and each of the dwellings is within the same building (or 'curtilage') as the other(s); *or*
- it arises because a property is shown as a dwelling when it should not be or should be shown as a number of dwellings.

### Response of the listing office

In **England and Wales**, the listing officer should write within 28 days acknowledging receipt of the proposal, unless the proposal is considered to be invalid (see below). In **Scotland**, the assessor should write acknowledging receipt of the proposal within 14 days. The acknowledgement letter should include details of the procedures that will be followed.<sup>71</sup>

### Joint proposals in Scotland

In Scotland, other interested people (see p37) may write to the assessor indicating that they wish to support the proposal.<sup>72</sup> Provided the proposal has not been withdrawn or referred to the local valuation appeal committee, the original proposal should then be treated as a joint proposal.

### Invalid proposals

Different procedures apply to invalid proposals in England, Wales and Scotland. If the listing officer or assessor fails to identify an invalid proposal at this stage, the point can still be raised at an appeal hearing.<sup>73</sup>

#### England

In England, if the listing officer considers that the proposal is invalid, you are sent an 'invalidity notice'. This should be done within four weeks of her/him receiving the proposal. This notice:<sup>74</sup>

- gives the reasons why the proposal is considered invalid; *and*
- provides you with a right to make a further proposal in relation to the same dwelling (see p41) or to appeal to the VTE (see p42).

The test applied with an invalidity notice is how would the proposal reasonably be understood by those on whom it is to be served.<sup>75</sup>

The listing officer may withdraw an invalidity notice at any time by informing you in writing. Unless an invalidity notice has been withdrawn, you can:

- make a further proposal, but only once and only if the original proposal was made within the appropriate time limit. If you make a further proposal, the earlier proposal which resulted in the invalidity notice is treated as withdrawn; *or*
- appeal to the VTE. You must send the tribunal a copy of the invalidity notice, together with a written statement. This should include the address of the dwelling and the reasons why the proposal is considered valid by you. Action on the original proposal is suspended until either the listing officer withdraws the invalidity notice, or the VTE or High Court reaches a decision on the validity of the proposal. If the listing officer withdraws an invalidity notice after an appeal has been started, s/he must inform the tribunal. See Chapter 11 for more details on tribunal hearings.

### **Scotland**

In Scotland, a distinction is drawn between proposals that are considered invalid because:<sup>76</sup>

- you are not an appropriate person to make a proposal or because it is out of time; *and*
- you did not include the required information.

The assessor must write to you within six weeks of receiving the proposal, giving reasons for the decision, and describe your right to appeal to the assessor within four weeks. If no such appeal is made, the matter ends. If you did not include the required information, the letter must give reasons for the decision and should also identify the information that needs to be supplied. You may either:

- supply the information within four weeks; *or*
- appeal in writing to the assessor within four weeks.

If the information is not supplied or an appeal is not made within the four-week period, the assessor treats the proposal as invalidly made and that is the end of the matter.

If an appeal is made in either case but the assessor still considers the appeal invalid, s/he should inform the local valuation appeal committee in writing, within four weeks, that an appeal has been made. Details of the proposal and the assessor's reasons for considering the proposal invalid should also be given.<sup>77</sup>

### **Wales**

In Wales, if the listing officer believes that a proposal has not been validly made, s/he may serve an invalidity notice on you. This must be done within four weeks. The notice must explain the reasons for her/his decision and that you can either make a further proposal or appeal to a valuation tribunal. If you make a fresh

proposal, the original is treated as withdrawn. The fresh proposal must be made within four weeks of the invalidity notice being served.

#### **After a valid proposal has been made: England and Wales**

Within six weeks of receiving a valid proposal, the listing officer should send a copy to anyone else who appears to be liable for council tax on the dwelling. Copies should also be sent to the local authority if it has informed the listing officer in writing that it wishes to receive a copy of a class(es) of proposal, and your proposal falls within such a class. Each copy should be accompanied by a statement of the procedures to be followed.<sup>78</sup>

Following the receipt of a valid proposal:

- the listing officer may agree to the proposal (see below);
- all interested parties may agree to a different alteration to the list (see below);
- an appeal may be made to the VTE/VTW (see below);
- the proposal may be withdrawn (see p43).

#### **The listing officer agrees to the proposal**

If the listing officer agrees to the proposal, you and the liable person (if different) should be notified that the valuation list will be altered accordingly. The valuation list should be altered within six weeks of the date of the letter.<sup>79</sup>

#### **Agreeing to a different alteration**

Before an appeal, it is possible for the listing officer to agree an alteration to the list that is different from that proposed, but with which you agree. This requires the agreement of all interested parties. Negotiation can take place directly with the VOA. If such an agreement is reached, the listing officer should alter the valuation list within six weeks of the date of the agreement. The original proposal is treated as having been withdrawn.<sup>80</sup>

#### **Appealing to the valuation tribunal**

If the listing officer has made a decision and served a notice on the proposer, the taxpayer and any other competent person, an appeal can be made to the VTE/VTW (see p256).

An appeal must be made within three months. If an appeal has not been made within this time, the president of the tribunal can authorise the appeal if the delay has arisen because of circumstances beyond your control.

The appeal is started by serving the tribunal with a copy of the decision notice, together with the following information if this is not contained in the decision notice:

- the address of the dwelling;
- the reasons for the appeal;
- the name and address of:
  - the appellant;
  - the proposer (if different from the appellant);



- the listing officer;
- any other person who appears to be a taxpayer;
- any other interested person.

Where, after an appeal has been made to the VTE under regulation 13 of the Council Tax (Alteration of Lists and Appeals) Regulations (disagreement as to proposed alteration), the listing officer alters the list in accordance with the proposal to which the appeal relates, the listing officer must notify the VTE and the appeal is treated as having been withdrawn on the date on which the notice is served on the VTE.<sup>81</sup>

In rare situations where neither the local authority nor the valuation office will take responsibility for deciding whether a dwelling is on the list or should be taxed, or officials attached to both try to claim it is the responsibility of the other, you should challenge the decision letters of both bodies with two separate appeals both being made to the valuation tribunal.

Appeals are described in Chapter 11.

**Note:** you normally cannot make a second appeal on the same facts if one has already been determined against you by the valuation tribunal but an application may be made to a vice president to set aside a decision or an application may be made by way of judicial review.<sup>82</sup>

### **Withdrawing the proposal**

You may withdraw the proposal at any time before an appeal by writing to the tribunal, or orally at the hearing. If a proposal is withdrawn at the hearing, it does not take effect unless the panel consents. Each party must be notified in writing of a withdrawal, and the date on which the proposal is withdrawn should be confirmed. Each party has the opportunity to begin a new appeal about the decision by serving a written notice. This must state that the new appellant wishes to proceed with an appeal and the reason for it.

In the past, it was not unknown for the valuation office or for local authority staff to attempt to encourage people to withdraw their proposals and appeals. Such 'persuasion' included claims that a tribunal had previously rejected a similar appeal, so an appellant had no prospect of success. Remember that a tribunal decision on any point is persuasive, but not binding, on subsequent tribunals (see Chapter 11). If you are subject to improper pressure over an appeal by an official either in the valuation office or from, or acting on behalf of, the local authority, you should make a formal complaint.

### **After a valid proposal has been made: Scotland**

In Scotland, once a valid proposal has been received:

- the assessor may agree to the proposal (see p44);
- an appeal may be made to a local valuation appeal committee (see p44);
- the proposal may be withdrawn (see p44).

#### The assessor agrees to the proposal

If the assessor thinks the proposal is well founded, you (and any joint proposer) should be advised of this in writing. The list should be altered within six weeks of the date of the letter.<sup>83</sup>

#### Appealing to a local valuation appeal committee

If the assessor thinks that the proposal is not well founded and it is not withdrawn, s/he should refer the disagreement to the local valuation appeal committee. This should be done within six months of the day the assessor received the proposal.<sup>84</sup>

If the assessor has previously issued an invalidity notice on the grounds that:

- you are not an appropriate person to make the proposal or because the proposal is out of time, the six-month period starts from the day the assessor withdrew the notice or you won the appeal against the notice;
- the proposal does not include the required information, the six-month period starts from the day that all the relevant information was supplied or the day you won the appeal against the notice.<sup>85</sup>

A proposal may be adopted by another interested person (see p37) if the original proposer seeks to withdraw it. In such cases, the six-month period starts from the date the person informed the assessor of her/his wish to adopt the proposal.<sup>86</sup>

The appeal is initiated by the assessor writing to the secretary of the valuation committee, advising of the appeal. The following information should be included:<sup>87</sup>

- proposed alteration of the list;
- date on which the proposal was received;
- name and address of the proposer;
- grounds on which the proposal was made.

Appeals are described in Chapter 11.

#### Withdrawing the proposal

The proposal may be withdrawn at any time by writing to the assessor.<sup>88</sup> If none of the proposers are currently liable for the tax on the dwelling, the assessor must write to at least one currently liable person telling her/him about the proposed withdrawal. An interested person (see p37) has six weeks from the date of the letter to advise the assessor that s/he wishes to adopt the proposal. From that date, it is then treated as having been made by that person.

#### Notification of an alteration

Within six weeks of altering the list, the listing officer or assessor should write to the local authority stating the effect of the alteration. The local authority should alter its copy of the valuation list as soon as is reasonably practicable.<sup>89</sup>

## England and Wales

In England and Wales, the listing officer should also write to the person who is currently liable for the tax on the dwelling within six weeks of altering the list, advising her/him of the effect of the alteration and the process by which a proposal and appeal may be made.<sup>90</sup> This obligation to notify does not, however, apply if the alteration was made solely to correct a clerical error, or to reflect:

- a decision of the listing officer that a proposal is well founded; *or*
- an agreed alternative alteration; *or*
- a change in the address of the dwelling concerned; *or*
- a change in the area of the billing authority; *or*
- the decision of the VTE/VTW or the High Court in relation to the dwelling concerned.

## Scotland

In Scotland, the assessor must notify a liable person within six weeks of the alteration being made. Where the alteration involves the addition of the dwelling to the list, the owner must also be notified within six weeks of the alteration. The notification should include a statement about the process by which a proposal may be made.

Additionally, the assessor must notify a liable person within six weeks of the alteration being made if:

- an alteration has been agreed, but the proposer is not a liable person at the time of the alteration; *or*
- an appeal decision has led to the alteration of the list but none of the parties to the appeal is a liable person on the date of the alteration.<sup>91</sup>

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## 7. The valuation bands

The set amount of council tax and Scottish Water charges for each dwelling depend on the valuation band to which it is allocated. Different valuation bands apply in England,<sup>92</sup> Scotland<sup>93</sup> and Wales.<sup>94</sup> You can find out which band your property is in at [gov.uk/council-tax-bands](http://gov.uk/council-tax-bands). For the purpose of determining which valuation band is applicable to a dwelling for any day, the state of affairs at the end of the day is assumed to have existed throughout that day.<sup>95</sup>

## England and Scotland

The original bands from the 1993 valuation list apply in England and Scotland, although the ratio of calculation of tax has changed (see p47).

#### **Valuation bands in England**

<i>Valuation band</i>	<i>Range of values</i>
A	Up to £40,000
B	£40,001 to £52,000
C	£52,001 to £68,000
D	£68,001 to £88,000
E	£88,001 to £120,000
F	£120,001 to £160,000
G	£160,001 to £320,000
H	£320,001 and over

#### **Valuation bands in Scotland**

<i>Valuation band</i>	<i>Range of values</i>
A	Up to £27,000
B	£27,001 to £35,000
C	£35,001 to £45,000
D	£45,001 to £58,000
E	£58,001 to £80,000
F	£80,001 to £106,000
G	£106,001 to £212,000
H	£212,001 and over

## **Wales**

From 1 April 2005, dwellings in Wales fall into one of the following bands, based on a theoretical valuation date of 1 April 2003.<sup>96</sup> These bands apply to all domestic dwellings from 1 April 2005.

#### **Valuation bands in Wales from 1 April 2005<sup>97</sup>**

<i>Valuation band</i>	<i>Range of values</i>
A	Up to £44,000
B	£44,001 to £65,000
C	£65,001 to £91,000
D	£91,001 to £123,000
E	£123,001 to £162,000
F	£162,001 to £223,000
G	£223,001 to £324,000
H	£324,001 to £424,000
I	£424,001 and over



Before 1 April 2005, the valuation bands for Wales were as listed in the table below. These values apply to any calculation of council tax for a dwelling in Wales before 1 April 2005. This may arise if there is a question of backdating an exemption (see Chapter 4) or discount (see Chapter 7).

***Valuation bands in Wales before 1 April 2005***

<i>Valuation band</i>	<i>Range of values</i>
A	Up to £30,000
B	£30,001 to £39,000
C	£39,001 to £51,000
D	£51,001 to £66,000
E	£66,001 to £90,000
F	£90,001 to £120,000
G	£120,001 to £240,000
H	£240,001 and over

**How the amount of tax payable varies between bands**

The council tax payable in any local authority depends upon the valuation band in which the dwelling has been placed. The lower the value of the band, the lower the bill will be. The amount of tax payable on dwellings in the same area varies between valuation bands in **England** in the following proportions:<sup>98</sup>

6(A):7(B):8(C):9(D):11(E):13(F):15(G):18(H)

This means, for example, that the tax payable on a Band H dwelling is three times more than that payable on a Band A dwelling and double that of a Band D dwelling. The local authority has no discretion to vary bands or the relative proportion of tax paid within each band.

In **Wales** from 1 April 2005, the amount of tax payable on dwellings in the same area varies between valuation bands in the following proportions:<sup>99</sup>

6(A):7(B):8(C):9(D):11(E):13(F):15(G):18(H):21(I)

This means that those in the top Band I in Wales will pay three-and-a-half times more than those in the lowest Band A.

In **Scotland** from 1 April 2017, the following ratios and proportions apply:<sup>100</sup>

240(A):280(B):320(C):360(D):473(E):585(F):705(G):882(H)

The new proportion increases the levels of tax payable for dwellings in the higher four bands (E to H) relative to that payable for dwellings in the lower four bands.

In England, Wales and Scotland, the calculation of tax for different valuation bands in any financial year is worked out by the formula:  $A \times (N \text{ divided by } D)$ . A

is the average amount calculated (or last calculated) by the billing authority for each dwelling for that year, N is the number associated with the valuation band and D is the number associated with Band D.<sup>101</sup>

In 2020/21, the average council tax Band D payable:

- in England, is £1,807;<sup>102</sup>
- in Wales, is £1,667;<sup>103</sup>
- in Scotland, is £1,308.<sup>104</sup>

## Notes

### 1. Who is responsible for valuations

- 1 **EW** s20 LGFA 1992
- 2 **EW** s26 LGFA 1992
- 3 s84(1) LGFA 1992
- 4 s86(5) LGFA 1992
- 5 s86(10) LGFA 1992
- 6 **EW** s21 LGFA 1992
- 7 **S** s86(7) LGFA 1992
- 8 **EW** s21 LGFA 1992
- 9 **S** s86(8) LGFA 1992
- 10 **EW** s21 LGFA 1992
- 11 **S** s86(9) LGFA 1992
- 12 VOA CTM 3.12
- 13 Adjudicator's Office, *Annual Report 2020*, at [gov.uk/government/publications/the-adjudicators-office-annual-report-2020](https://gov.uk/government/publications/the-adjudicators-office-annual-report-2020)

### 2. The listing officer's and assessor's powers

- 11 **E** s25A LGFA 1992
- 12 **W** s26 LGFA 1992
- 13 **S** s89 LGFA 1992
- 14 s25A LGFA 1992, as inserted by art 3 Council Tax and Non Domestic Rating (Powers of Entry: Safeguards) (England) Order 2015 No.982
- 15 VOA charter, 8 February 2016
- 16 **EW** s26 LGFA 1992
- 17 **S** s89 LGFA 1992
- 18 **EW** s27 LGFA 1992
- 19 **S** s90 LGFA 1992
- 20 **EW** s27 LGFA 1992
- 21 **S** s90 LGFA 1992

- 17 **EW** s27 LGFA 1992, as amended by s32 and Sch 37 Part 9 Criminal Justice Act 2003
- 18 **S** s90 LGFA 1992; The Criminal Justice Act 1991 (Commencement No.3) Order 1992 No.333
- 19 **EW** s27(6) LGFA 1992
- 20 **S** s90 LGFA 1992
- 21 **EW** s27 LGFA 1992
- 22 **S** s90 LGFA 1992

### 3. How dwellings are valued

- 20 **E** s21 LGFA 1992; CT(SVD) Regs
- 21 **W** s21 LGFA 1992; CT(SVD) Regs, as amended by CT(SVD)(W)(A) Regs
- 22 **S** s86(2) LGFA 1992 and CT(VD)(S) Regs
- 23 Response to Parliamentary Question by Rishi Sunak, Under-secretary of State for Housing, Communities and Local Government, 19 March 2018
- 24 *Assessor for Lothian Valuation Joint Board (Appellant) v McLaughlin* [2020] CSIH 16
- 25 *R v East Sussex Valuation Tribunal ex parte Silverstone* [1996] RVR 203
- 26 *Coll (LO v Walters* [2016] EWHC 831 (Admin)
- 27 *Call v Brannan; Call v Kozak and another* [2015] All ER (D) 44 (Apr)
- 28 **EW** *Call v Brannan; Call v Kozak and another* [2015] All ER (D) 44 (Apr)
- 29 **S** Reg 2(1) CT(VD)(S) Regs; *Assessor for Strathclyde v Rea* [1995] SC 577
- 30 *Wilson v Jo Coll (LO)* [2011] EWHC 2824 (Admin)
- 31 VOA, CTM, Practice Note 4

- 29 *Assessor Tayside Joint Valuation Board v a decision of the valuation appeal committee for Perth and Kinross* [2017] CSIH 64, para 25
  - 30 *Assessor Tayside Joint Valuation Board v a decision of the valuation appeal committee for Perth and Kinross* [2017] CSIH 64, para 25
  - 31 **E** s21 LGFA 1992; CT(SVD) Regs  
**W** s21 LGFA 1992; CT(SVD) Regs, as amended by CT(SVD)(W)(A) Regs  
**S** s86(2) LGFA 1992; CT(VD)(S) Regs
  - 32 **S** Reg 3 CT(VD)(S) Regs; *The Appeal of Grampian Valuation Joint Board* [2003] RA 167 Sc
  - 33 Parliamentary Answer by John Healy, Minister for Local Government, 13 December 2007; reg 3 CT(ALA)(E) Regs, as amended by reg 2(2)(c) CT(ALA)(E)(A) Regs
- 4. Compiling and maintaining valuation lists**
- 34 **EW** ss22 and 22B LGFA 1992  
**S** s84 LGFA 1992
  - 35 **EW** ss22 and 22B LGFA 1992  
**S** s85 LGFA 1992
  - 36 **EW** s22 LGFA 1992  
**S** s84 LGFA 1992
  - 37 *National Car Parks Ltd v Baird (VO)* [2004] EWCA Civ 967; *BMC Properties and Management v Jackson (VO)* [2015] EWCA Civ 1306
- 5. Inspecting the valuation list**
- 38 **EW** s28 LGFA 1992  
**S** s91 LGFA 1992
  - 39 **EW** s28 LGFA 1992  
**S** s91 LGFA 1992
  - 40 **EW** s23 LGFA 1992 and CT(CVL) Regs  
**S** s84 LGFA 1992 and CT(CVL) Regs
  - 41 **EW** s23 LGFA 1992  
**S** s84 LGFA 1992
  - 42 CTGM 3.4.1
- 6. Altering a valuation list**
- 43 **E** Reg 3 CT(ALA)(E) Regs, as amended by reg 2 CT(ALA)(E)(A) Regs; VTE(CTRA)(P) Regs  
**W** CT(ALA) Regs  
**S** r4(1)(b)(i) CT(ALA)(S) Regs
  - 44 *Adam v Listing Officer* [2014] EWHC 1110 (Admin)
  - 45 **E** s24 LGFA 1992  
**S** s87 LGFA 1992
  - 46 Reg 3(2)(A) CT(ALA)(E) Regs, as amended by reg 2(2)(c) CT(ALA)(E)(A) Regs
  - 47 **E** Reg 9 CT(ALA)(E) Regs
  - 48 **W** Reg 14(2) CT(ALA) Regs, as amended by CT(ALA)(A)(W) Regs  
**S** Reg 19 CT(ALA)(S) Regs; *Lothian Valuation Joint Board v Campbell and Campbell* [2011] CSIH 47
  - 49 **E** s24 LGFA 1992  
**S** s87 LGFA 1992
  - 50 *Tilly v Listing Officer for Tower Hamlets* [2001] RVR 250
  - 51 **E** Reg 9 CT(ALA)(E) Regs  
**W** Reg 14(5)(a) and (b) CT(ALA) Regs, as amended by CT(ALA)(A)(W) Regs
  - 52 Reg 19 (S) CT(ALA)(S) Regs
  - 53 **E** CT(SVD) Regs  
**W** CT(SVD)(W)(A) Regs  
**S** CT(VD)(S) Regs
  - 54 Reg 3(1)(b)(i) CT(ALA)(E) Regs; *Listing Officer for Cornwall v Dannhauser* [2019] PTSR 743
  - 55 *Lothian Valuation Joint Board v Campbell and Campbell* [2011] CSIH 47
  - 56 **E** Reg 6 CT(SVD) Regs, as amended by CT(VALA)(E) Regs  
**S** CT(VD)(S) Regs, as amended by CT(VD)(S)(A) Regs
  - 57 **E** Reg 2 CT(ALA)(E) Regs  
**S** Reg 3 CT(ALA)(S) Regs
  - 58 Reg 4 CT(ALA)(E) Regs
  - 59 **E** Reg 4 CT(ALA)(E) Regs  
**S** Reg 5 CT(ALA)(S) Regs
  - 60 **E** Reg 4 CT(ALA)(E) Regs  
**S** Reg 5 CT(ALA)(S) Regs
  - 61 **E** Reg 4 CT(ALA)(E) Regs  
**S** Reg 5 CT(ALA)(S) Regs
  - 62 **E** Reg 4(5) CT(ALA)(E) Regs  
**S** Reg 5 CT(ALA)(S) Regs
  - 63 **E** Reg 4 CT(ALA)(E) Regs  
**S** Reg 5 CT(ALA)(S) Regs
  - 64 **E** Reg 4(2) CT(ALA)(E) Regs  
**S** Reg 5 CT(ALA)(S) Regs
  - 65 *Baiyelo v Corkish* [2017] Appeal No. S690727898/084CAD 22 May 2017, judgment of VTE President Mr Garland
  - 66 s24 LGFA 1992; reg 2(2) CT(ALA)(A)(W) Regs substituting reg 14 CT(ALA) Regs
  - 67 **E** Reg 5 CT(ALA)(E) Regs  
**S** Reg 6 CT(ALA)(S) Regs
  - 68 **E** Reg 5 CT(ALA)(E) Regs  
**S** Reg 6 CT(ALA)(S) Regs
  - 69 *Pengelly v Listing Officer* [2014] EWHC 4142
  - 70 Reg 5 CT(ALA)(E) Regs
  - 71 Reg 7 CT(ALA)(S) Regs
  - 72 Reg 12 CT(ALA)(S) Regs

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- 73 **E** CT(ALA)(E) Regs  
**W** CT(ALA) Regs  
**S** CT(ALA)(S) Regs
- 74 Reg 7 CT(ALA)(E) Regs
- 75 *R v Northamptonshire Local Valuation Court ex parte Anglian Water Authority* [1990] RA 93 CA; *Patel v Jackson* [2018] UKUT 420 (LC)
- 76 Regs 8 and 9 CT(ALA)(S) Regs
- 77 Reg 10 CT(ALA)(S) Regs
- 78 Reg 8 CT(ALA)(E) Regs
- 79 Reg 9(3) CT(ALA)(E) Regs
- 80 Reg 9(4) CT(ALA)(E) Regs
- 81 Reg 19(7) VTE(CTRA)(P) Regs
- 82 *Hakeem v VTS and London Borough of Enfield* [2010] EWHC 152 (Admin); *Bailyelo v Corkish* [2017] Appeal No. S690727898/084CAD
- 83 Reg 14 CT(ALA)(S) Regs
- 84 Reg 15 CT(ALA)(S) Regs
- 85 Reg 15 CT(ALA)(S) Regs
- 86 Reg 15 CT(ALA)(S) Regs
- 87 Reg 15 CT(ALA)(S) Regs
- 88 Reg 11 CT(ALA)(S) Regs
- 89 **E** Reg 12(1) CT(ALA)(E) Regs  
**S** Reg 16 CT(ALA)(S) Regs
- 90 Reg 12 CT(ALA)(E) Regs
- 91 Reg 16 CT(ALA)(S) Regs

### 7. The valuation bands

- 92 **E** s5(2) LGFA 1992
- 93 **S** s74(2) LGFA 1992
- 94 **W** s5(3) LGFA 1992
- 95 **EW** s2(2)(b) LGFA 1992; *BMC Properties and Management v Jackson (VO)* [2015] EWCA Civ 1306  
**S** s71(2)(b) LGFA 1992
- 96 **W** s5(3) LGFA 1992
- 97 Art 2(3) Council Tax (Valuation Bands) (Wales) Order 2003
- 98 s5 LGFA 1992
- 99 s5(1A) LGFA 1992
- 100 s74 LGFA 1992 as substituted by art 2(1) Council Tax (Substitution of Proportion) (Scotland) Order 2016
- 101 s36 LGFA 1992
- 102 Ministry of Housing, Communities and Local Government, *Council tax levels set by local authorities in England 2020-21 (Revised)*, Statistics Release, 25 March 2020
- 103 Statistics for Wales, Council Tax levels in Wales: April 2020 to March 2021 Budget Requirement (BR1), 24 March 2020
- 104 Scottish Government, Dataset: Band D Council Tax 2020



# Chapter 4

## Exempt dwellings

### This chapter covers:

1. Exempt dwellings in England and Wales (below)
2. Exempt dwellings in Scotland (p62)
3. How exempt dwellings are identified (p68)
4. Notification of exemption (p69)
5. Penalties (p70)
6. Appeals (p70)

No council tax is payable on a dwelling on any day when it falls into an exempt category. The local authority must take steps each year to establish which dwellings in its area are exempt. When determining whether a dwelling is exempt, the state of affairs at the end of the day is assumed to have existed throughout that day.<sup>1</sup>

## 1. Exempt dwellings in England and Wales

An exempt dwelling is one that falls into a class of dwelling on which no council tax is payable for certain periods (listed A–W). To be exempt, a dwelling has to satisfy certain requirements either set by the Secretary of State or by the local authority itself. The classes of dwellings that are entitled to an exemption are set out in the Council Tax (Exempt Dwellings) Order 1992.<sup>2</sup>

### *Exemption classes B and D–W<sup>3</sup>*

- Class B Unoccupied dwelling owned by a charity (up to six months). See p53.
- Class D Dwelling unoccupied by someone who is detained or in prison. See p54.
- Class E Unoccupied dwelling previously the sole or main residence of someone who has moved into a hospital, care home or certain hostels. See p55.
- Class F Dwelling unoccupied because someone has died. See p55.
- Class G Unoccupied dwelling in which occupation is prohibited by law. See p56.
- Class H Unoccupied dwelling held for a minister of religion. See p57.
- Class I Unoccupied dwelling previously the sole or main residence of someone who has moved to receive personal care. See p57.

## Chapter 4: Exempt dwellings

### 1. Exempt dwellings in England and Wales

- Class J An unoccupied dwelling which was previously the sole or main residence of someone who has moved elsewhere to provide personal care to another person. See p58.
- Class K An unoccupied dwelling previously the sole or main residence of a student who is resident elsewhere or a person who will become a student within six weeks of vacating the dwelling. See p58.
- Class L An unoccupied dwelling in the possession of a mortgage lender. See p58.
- Class M Student halls of residence. See p59.
- Class N A dwelling wholly occupied by students or school or college leavers. See p60.
- Class O Armed forces accommodation. See p61.
- Class P Visiting forces accommodation. See p61.
- Class Q An unoccupied dwelling where the person who would otherwise be liable is a trustee in bankruptcy. See p61.
- Class R Empty caravan pitches and houseboat moorings. See p61.
- Class S A dwelling wholly occupied by people under 18. See p61.
- Class T A dwelling which is an annexe and may not be let separately. See p61.
- Class U A dwelling occupied by people who are 'severely mentally impaired'. See p62.
- Class V A dwelling in which at least one liable person has diplomatic, Commonwealth or consular privilege or immunity. See p62.
- Class W A dwelling which is one of at least two dwellings in a single property occupied by a dependent relative of a person living in another dwelling in the property. See p62.

An exemption from council tax may be considered as a possession within the meaning of Article 1 Protocol 1 of the European Convention on Human Rights.<sup>4</sup>

## Vacant homes

In England since 1 April 2013, two classes of dwelling which related to vacant homes – Classes A and C – are no longer classed as automatically exempt on a national basis but may be on a local basis if an individual council decides otherwise.<sup>5</sup> **Note:** in Wales, these categories remain as exempt dwellings.

### *Exemption Classes A and C*

- Class A For a 12-month period, a vacant dwelling requiring or undergoing major repair work, or undergoing structural alteration, or having undergone either if less than six months have elapsed since the works were substantially completed.
- Class C A dwelling vacant for a six-month period or less – eg, following completion.

Properties in England falling into these two categories no longer receive an automatic exemption and are liable for 100 per cent of the council tax. Any

reduction is awarded as a discount only if your local authority decides that a discount should be given (see p119).

Exemptions may still be claimed for previous years in some cases – eg, if a new bill is produced for a ‘historic liability’ for a previous financial year. This may also require a listing being challenged with the listing officer as an appeal to remove the property from the valuation list.<sup>6</sup>

In addition, a local authority may make a class of dwelling exempt by way of a discount that reduces the amount of council tax payable on a dwelling to zero (see Chapter 7).

The term ‘exempt dwellings’ applies to different types of dwelling which are vacant.

The term ‘**vacant**’ refers to a dwelling which is both:<sup>7</sup>

- unoccupied; *and*
- substantially unfurnished.

The legislation contains no definition of ‘substantially unfurnished’. In practice, many local authorities regard a dwelling as ‘**substantially unfurnished**’ if there are insufficient furnishings to enable someone to live in the dwelling. However, the quantity of furniture present in the dwelling, in relation to its size, should be the determining factor, ignoring anything other than ‘furniture’ – eg, a studio flat with a table, two chairs, a sofa and a bed (plus a cooker, washer/drier and TV) would be substantially furnished, but the same goods would not make a four-bedroom house substantially furnished.

The legislation defines an ‘**unoccupied dwelling**’ as one in which no one lives, and an ‘**occupied dwelling**’ as one in which at least one person lives.<sup>8</sup> There is, however, a significant distinction between occupying a home and being solely or mainly resident in it (see p77). While the same person may occupy two or more dwellings at any one time, s/he can only be mainly resident in one of them. The local authority must consider each case on the particular facts.

## Classes of exempt dwellings in England and Wales

### Class B: unoccupied dwelling owned by a charitable body

An unoccupied dwelling owned by a body established solely for charitable purposes is exempt for up to six months from the last day it was occupied. Almshouses and refuges are typical examples of properties that are exempt.

Four conditions must be met for the exemption to apply.<sup>9</sup>

- The dwelling must be owned by the body.
- The body must be established for charitable purposes only.
- The dwelling must have been unoccupied for a period of less than six months.
- The last occupation must have been in furtherance of the objects of the charity.

For this exemption to apply, the charity must be the freeholder or hold the most inferior (ie, shortest) leasehold interest for a term of six months or more. The

## **Chapter 4: Exempt dwellings**

### **1. Exempt dwellings in England and Wales**

dwelling may be furnished or unfurnished. When deciding the day on which the dwelling was last occupied, any period of occupation of not more than six weeks is disregarded.<sup>10</sup>

It should normally be enough for there to be a short statement in writing as a representation from the charity which covers all four conditions directly and which states that:<sup>11</sup>

- based on the material held by the charity, each of the conditions are met; *and*
- the statement was true to the belief of the person making the statement.

To show that the last occupation was in furtherance of the aims of the charity, it is expected that the charity will supply information about the last occupier. This may include details of the history of any letting and some details of the last occupier – eg, why s/he was receiving help from the charity and what benefits s/he received where relevant. There should be sufficient evidence to show the aims of the charity were being fulfilled.<sup>12</sup> A draft letter suitable for use by charities has been issued by local authorities.<sup>13</sup>

### **Class C: vacant dwellings in Wales**

A vacant dwelling (one that is unoccupied and substantially unfurnished, or an unoccupied caravan or houseboat) is exempt for up to six months.<sup>14</sup> This exemption applies both to new and previously occupied dwellings. Any one period of not more than six weeks during which the dwelling is occupied is disregarded when deciding if the dwelling has been vacant.

### **Class D: dwelling unoccupied because the former resident is detained or in prison**

An unoccupied dwelling is exempt indefinitely if the former resident is in prison or certain other forms of detention and the dwelling was previously her/his sole or main residence (see p77).<sup>15</sup> For the purpose of this exemption, a person is considered detained if s/he would be regarded as such for the purpose of a council tax discount (see p116).<sup>16</sup> The definition includes people detained under immigration or mental health powers, but not those in prison for non-payment of council tax.

This exemption includes not only former residents who were owners (ie, the freeholder or the leaseholder with the shortest lease of six months or more) but also a former tenant of the dwelling, whether or not s/he is the person who is liable to pay council tax on the property.<sup>17</sup>

The dwelling is also exempt if the owner or tenant was previously the sole or main resident and, since the end of her/his imprisonment, has been in a hospital,



care home, hostel or other accommodation where care is provided, or if s/he has been providing personal care to someone else.

**Example**

On leaving prison, Geoff moves in with his elderly mother to look after her. Geoff's former home remains exempt.

**Class E: dwelling unoccupied because the former resident is in hospital or a care home**

An unoccupied dwelling is exempt indefinitely if it was previously the sole or main residence (see p77) of an owner, tenant or licensee:<sup>18</sup>

- who would be disregarded for the purpose of a council tax discount because s/he is a patient in hospital, or is in a care home or certain hostels; *and*
- who, since s/he last occupied the dwelling, has either been in that type of accommodation, in detention, or receiving or providing care elsewhere.<sup>19</sup> The care must be required for old age, disablement, illness, past or present alcohol or drug dependence, or past or present mental illness/disorder.

During temporary stays in hospital, you remain liable for council tax at your normal address. However, if your main residence is a hospital, your previous home is exempt from council tax, provided it is unoccupied.<sup>20</sup>

**Class F: unoccupied dwelling in which someone has died**

A dwelling is exempt if it has been unoccupied since the former resident's death and the only person liable for council tax on the dwelling would be the deceased's personal representative, and no grant of probate or letters of administration have been made.<sup>21</sup> In the case of rented accommodation, the exemption is designed to discourage landlords, who would become liable for council tax following a tenant's death, from pressing for the property to be cleared immediately in order to benefit from the six-month exemption for vacant dwellings or, alternatively, from seeking to pass on to the deceased's relatives or estate the council tax payable on the dwelling which is now unoccupied, but not vacant.

The exemption applies for each day for which the executor or administrator is liable for rent and lasts up to six months after the grant of probate or letters of administration. Prior to obtaining probate or letters of administration, there is no minimum period for the exemption to last. Thus, a delay of eight years in applying for probate will not restrict the exemption, even if the ultimate beneficiary is likely to be the same person as the executor.<sup>22</sup>

Any occupation of less than six weeks following the death is disregarded. Thus, the exemption is not ended if, for instance, a relative stays at the dwelling briefly in order to arrange the deceased's affairs or if carers who resided with the owner continue living in the property for more than a week.<sup>23</sup>

## Chapter 4: Exempt dwellings

### 1. Exempt dwellings in England and Wales

This exemption may not apply if the deceased left the dwelling to a beneficiary in her/his will who is a joint owner or who is already in occupation. In this case, the beneficiary becomes the taxpayer at the date of death, as s/he is deemed to become the owner for council tax purposes on that date. This situation may arise at the death of a spouse or partner who was living apart, or if a relative who was living in the dwelling succeeds to the tenancy. However, there may be an argument for an exemption if the executor is given any discretion over the dwelling that might affect whether the beneficiary can occupy it.

The Valuation Tribunal for England (VTE) has upheld a decision that members of a trust to whom a council taxpayer had transferred her bungalow to protect it from family business liabilities were not entitled to claim the exemption following her death. Although the bungalow was treated as part of the deceased's estate for inheritance tax purposes, it belonged to the trustees.<sup>24</sup>

#### **Class G: dwelling in which occupation is prohibited by law**

A dwelling is exempt indefinitely if its occupation is prohibited by law. This means that either it is illegal to occupy the dwelling or because it 'is kept unoccupied by reason of action taken under powers conferred by or under any Act of Parliament with a view to prohibiting its occupation or to acquiring it'. This may include:

- a condition imposed by planning control under Part 3 of the Town and Country Planning Act 1990;<sup>25</sup>
- a planning enforcement notice;<sup>26</sup>
- property which is unoccupied because it is being acquired under a compulsory purchase order.

However, a dwelling on which a local authority has served a repair notice does not qualify for an exemption, even if the occupant has to move out temporarily.<sup>27</sup> If the dwelling is actually occupied (eg, by squatters), the dwelling is not exempt from the charge. The squatters will normally be liable to pay the tax. See Chapter 5 for more information on liability. Decisions under Class G have been narrowly interpreted to restrict its use. For example, potential breaches of the Occupiers' Liability Act 1957, the Defective Premises Act 1972 or section 11 of the Landlord and Tenant Act 1985 which might give rise to legal liability towards occupiers are not sufficient to merit an exemption from council tax. The VTE Vice President has applied equivalent principles to those in a business rates case where the High Court considered that a potential breach of health and safety legislation did not amount to either a prohibition in law on occupation or prevent an owner from entering premises to restore them.<sup>28</sup>

A toll house built on a bridge which was exempted from rating under still-extant 18th century statutes did not amount to an exemption from council tax under Class G despite a previous assumption by the billing authority that the exemption applied.<sup>29</sup>

### **Class H: unoccupied dwelling held for a minister of religion**

An unoccupied dwelling, such as a vicarage, is exempt indefinitely if it is held to be available for occupation by a minister of any religious denomination and from where s/he will perform the duties of her/his office.<sup>30</sup> In determining the meaning of 'duties', tribunals have applied guidance originally issued to councils in 1994 on the type of duties which it assumed might be carried out by a minister of religion to qualify for an exemption. Duties should include some of the following:

- conducting religious worship;
- providing pastoral care, especially to those who are sick, distressed or needy;
- conducting weddings, funerals or baptisms (or their equivalent);
- providing leadership to local members of her/his denomination;
- overseeing the ministry of others who perform these functions and providing them with support and pastoral care.

The administration of an online forum and the writing of articles are not considered to be conducting religious worship.<sup>31</sup>

The VTE refused to award an exemption where an appellant did not conduct weddings, funerals or baptisms or provide leadership to local members of his denomination. The members of the church to which he belonged consisted of approximately 25 people spread all over the world and was not considered by the panel to be a local congregation or community.<sup>32</sup> Similarly, a claim for a religious exemption where there was no evidence of the appellant carrying out such duties from his home and the Church to which he belonged was in Texas was ruled not to be entitled to the exemption.<sup>33</sup>

### **Class I: dwelling unoccupied because the former resident is receiving care elsewhere**

An unoccupied dwelling is exempt indefinitely if it was the sole or main residence (see p77) of an owner, tenant or licensee who now has her/his sole or main residence elsewhere and where s/he is receiving personal care (but not a hospital, care home or certain hostels).<sup>34</sup> The personal care must be required for old age, disablement, illness, past or present alcohol or drug dependence, or past or present mental illness/disorder.

To qualify, the former resident must have been resident in such accommodation, or in prison or detention centre, or in a hospital, care home or hostel since the dwelling last ceased to be her/his residence.

This exemption applies if the former resident was an owner and, in England, if s/he was a tenant or licensee, irrespective of whether s/he was liable for council tax on the dwelling. In Wales, this exemption extends to former tenants only if the person has been absent for the whole period since the dwelling last ceased to be her/his residence.

**Class J: dwelling unoccupied because the former resident is providing care elsewhere**

An unoccupied dwelling is exempt indefinitely if it was previously the sole or main residence (see p77) of an owner, tenant or licensee who is now solely or mainly resident elsewhere because s/he is providing personal care to someone.<sup>45</sup>

This exemption applies to former residents who were owners, as well as tenants or licensees, irrespective of whether they were liable for council tax on the dwelling.

The carer does not have to be disregarded for the purpose of a council tax discount. However, the person being cared for must require the care because of old age, disablement, illness, past or present alcohol or drug dependence, or past or present mental illness/disorder.

The carer must have been absent from her/his own dwelling since it was last occupied because s/he has been providing such care. It has been held that a person cannot claim an exemption if s/he has never lived in the dwelling in question.<sup>46</sup>

**Class K: dwelling left unoccupied by a student owner**

An unoccupied dwelling is exempt indefinitely if it was last occupied as the sole or main residence (see p77) of its owner who is now a student and s/he:<sup>47</sup>

- has been a student since s/he last occupied the dwelling; *or*
- has become a student within six weeks of leaving the dwelling.

'Student' has the same meaning as for council tax discount purposes (see p109). If there are joint owners of the unoccupied property, all of them must be students and at least one of them must have been solely or mainly resident there on the last day it was occupied, and the last one must have become a student within six weeks of the day it was last occupied as a sole or main residence.

**Example**

Josie is a single student studying in London. She left her former home in York and came to London three weeks before her course started. Josie owns a flat in York, which remains unoccupied apart from when she returns for short periods during college vacations.

The flat in York is exempt because it is unoccupied and Josie became a student within six weeks of having been solely resident there. It remains exempt when Josie returns in the vacations because, during these times, although it is occupied, the sole resident is a student. If Josie decided to let the flat in York to a tenant, it would cease to be exempt because it would no longer be unoccupied. However, it would continue to be exempt if the new tenant were also a student.

**Class L: unoccupied dwelling in the possession of a mortgage lender**

An unoccupied dwelling is exempt indefinitely if a mortgagee (ie, a bank, building society or finance company) is in possession.<sup>48</sup> This would arise, for example, if



the lender has repossessed the property because of the borrower's failure to keep up her/his mortgage payments.

### Class M: student halls of residence

A dwelling is exempt indefinitely if it is a hall of residence provided predominantly to accommodate students who would be disregarded for the purpose of a discount (p109).<sup>39</sup> To qualify for the exemption, the hall must be either:

- owned or managed by a prescribed educational institution; *or*
- the subject of an agreement allowing a prescribed educational institution to nominate the majority of the people who are to occupy the accommodation.

This exemption also extends to halls of residence, predominantly for the accommodation of students, owned or managed by a body established solely for charitable purposes.<sup>40</sup> For example, a body set up by a university students' union to manage accommodation needs would fall within this definition. The term 'halls of residence' only applies to universities and similar institutions. It does not include boarding school houses for pupils and staff, as these are not 'halls of residence' and school children are not classed as 'students' for council tax purposes.<sup>41</sup>

A hall (or hostel) should be exempt even if some non-students (eg, wardens, tutors or family members) live there. Any separate, self-contained flat or house provided for a non-student, such as a caretaker, is not covered by this exemption. If a hall of residence is used for more than 140 days a year for commercial purposes, such as conferences, it may be subject to non-domestic rates.

The operation of this exemption was considered straightforward until 2016 when Leicester City Council declined to award a Class M exemption to the majority of student rooms contained within three large blocks of purpose-built student accommodation operating as university halls of residence. Previously, the valuation office had banded each of the rooms as occupied by students.

In *Sulets v Leicester City Council*,<sup>42</sup> the VTE found the en-suite rooms with cooking facilities occupied by a single student to each be separate, self-contained flats and that 'in our view a separate flat for the accommodation of a single student (or, as may be, a couple sharing an intimate relationship) has no feature of a hall of residence....'. Consequently, each room attracted its own bill, with the exception of what were termed 'cluster flats', whereby rooms occupied by one student received a designation of a hall of residence and a Class M exemption.

As a consequence, many of the rooms were held not to fall within the exemption. While the rooms were occupied, each room received a Class N exemption (see p60) as being a dwelling occupied solely by a student. As a result, where the valuation office has elected to treat each room as a separate, chargeable dwelling, there may be a considerable administrative burden for both the billing authority and the bodies administering the student accommodation, with each

formerly exempt hall of residence attracting multiple bills. In practice, different local authorities adopt different practices.

#### **Class N: dwelling wholly occupied by students or 'relevant persons'**

To be exempt, the dwelling must be either:<sup>43</sup>

- occupied by one or more residents, all of whom are 'relevant persons'; *or*
- occupied only by one or more 'relevant persons' as term-time accommodation.

A distinction must be made between 'residents' who live in the property permanently and 'occupants' who are students for part of a term.<sup>44</sup>

A 'relevant person' is a:<sup>45</sup>

- student disregarded for discount purposes (see p109); *or*
- student's spouse, civil partner or dependant who is not a British citizen and who is prevented by the terms of her/his leave to enter or remain in the UK from working or claiming benefits; *or*
- school or college leaver who is disregarded for discount purposes (see p108).

Nursing or midwifery students who are studying academic courses at universities count as students.<sup>46</sup> If the dwelling has more than one resident, they must all meet the qualifying conditions for the exemption to apply.

A dwelling occupied by a relevant person is regarded as term-time accommodation during any vacation in which s/he:

- holds a freehold or leasehold interest in, or licence to occupy, the whole or any part of the dwelling; *and*
- has previously used, or intends to use, the dwelling as term-time accommodation.

#### **Example**

Three students rent a house as joint tenants. It is exempt from council tax. The exemption ends when one of the students is dismissed from her course and, therefore, no longer qualifies for a status discount. The three joint tenants are now jointly liable for the council tax on the dwelling. There are three residents, but two of them are disregarded for the purpose of a discount. The bill should be reduced by 25 per cent because there is only one adult resident who is not disregarded.

The exemption is only available to full-time students.<sup>47</sup>

As a consequence of the decision in *Sulets v Leicester City Council* (see p59), during term-time the student accommodation should receive an exemption as a dwelling wholly occupied by a student. In periods between student lettings, the exemption will not apply even if the dwelling remains empty and liability will revert to the owner or the party with rights equivalent to an owner.<sup>48</sup> A student is

not precluded from claiming the exemption by working or being a company director.<sup>49</sup>

### **Class O: armed forces accommodation**

Dwellings, either occupied or unoccupied, are exempt indefinitely if they are:<sup>50</sup>

- owned by the Secretary of State for Defence; *and*
- for the purposes of armed forces accommodation.

This includes, for example, armed forces barracks and married quarters. Contributions in place of council tax are paid by the Ministry of Defence to local authorities. These contributions should broadly match the amount which would otherwise have been payable.<sup>51</sup> In addition, a separate provision for members of the armed forces operates with the Military Covenant (see Chapter 7).

### **Class P: visiting forces accommodation**

A dwelling is exempt indefinitely if at least one person who would be liable is a member (or dependant) of a visiting force and s/he is neither a British citizen nor ordinarily resident in the UK. A dwelling is exempt under this category 'even if not all of the liable persons have a relevant association with a visiting force'. So, for instance, a dwelling in which the liable persons are a visiting serviceman and his British wife would be exempt.<sup>52</sup>

### **Class Q: unoccupied dwelling held by a trustee in bankruptcy**

An unoccupied dwelling is exempt indefinitely if the liable owner is a trustee in bankruptcy under the Insolvency Act 1986 or other bankruptcy legislation.<sup>53</sup> A trustee in bankruptcy is the person appointed by a general meeting of a bankrupt person's creditors or the court, whose duty is to take over all her/his property, sell the property for cash and distribute the resulting funds among the creditors.

### **Class R: unoccupied pitch and mooring**

A pitch or mooring not occupied by a caravan or boat is an exempt dwelling for council tax purposes.<sup>54</sup>

### **Class S: dwelling wholly occupied by someone under 18**

A dwelling only occupied by one or more persons under 18 is exempt.<sup>55</sup>

### **Class T: unoccupied dwelling which cannot be let separately**

A dwelling is exempt if it:

- is unoccupied; *and*
- forms part of a single property which includes another dwelling; *and*
- cannot be let separately from that other dwelling without a breach of planning control.

An example of this exemption is an empty 'granny flat'.<sup>56</sup>

### **Class U: dwelling occupied by a 'severely mentally impaired' person**

A dwelling is exempt if it is only occupied by a person(s) who is 'severely mentally impaired' as defined for the purposes of a council tax discount (see p113).<sup>57</sup>

A dwelling is also exempt if it is occupied by at least one severely mentally impaired person and one or more students or 'relevant persons' (see p109).<sup>58</sup> A property in which a number of severely mentally impaired individuals reside and receive care services and which is not divided into separate units may not qualify for a Class U exemption but may be designated as a care home.<sup>59</sup> A medical certificate from a practitioner confirming the impairment is necessary, otherwise any appeal is likely to be dismissed.<sup>60</sup>

### **Class V: people with diplomatic immunity**

A dwelling is exempt if at least one liable person has diplomatic, Commonwealth or consular privilege or immunity and that person is not a permanent resident of the UK, or a British citizen, British subject or British protected person. This exemption does not apply if that person has another dwelling in the UK which is her/his main residence or if her/his main residence is in the UK.

### **Class W: dwelling occupied by a dependent relative**

This exemption applies to a dwelling, which is one of at least two dwellings in a single property, occupied by a dependent relative of a person living in another dwelling in the property.<sup>61</sup>

A relative is a '**dependant**' if s/he is 65 or over, severely mentally impaired, or substantially and permanently disabled.<sup>62</sup> A '**relative**' is a person's spouse, parent, child, grandparent, grandchild, brother, sister, uncle or aunt, nephew or niece, great-grandparent, great-grandchild, great-uncle, great-aunt, great-nephew or great-niece, great-great-grandparent, great-great-grandchild, great-great-uncle, great-great-aunt, great-great-nephew or great-great-niece. A relationship by marriage (or by living together as spouses or by civil partnership<sup>63</sup>) is treated as a relationship by birth and any stepchild of a person is treated as her/his child.

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## **2. Exempt dwellings in Scotland**

In Scotland, the classes of empty dwellings that are exempt from council tax are set out in the Council Tax (Exempt Dwellings) (Scotland) Order 1997.<sup>64</sup>

Dwellings which are both unoccupied and unfurnished remain exempt from council tax liability for a period of up to six months. After six months, a second claim for the exemption is possible after a property has been occupied for a period of at least three months. The dwelling need not have been furnished in the three months.<sup>65</sup>



A property classed as an unoccupied dwelling is exempt if:<sup>66</sup>

- it is recently built and still unfurnished (see below);
- it is undergoing, or has recently undergone, major repair work or structural alteration (see below);
- it was last occupied by a charity (see p64);
- it is unfurnished (see p64);
- it was last occupied by, and remains the sole liability of, someone in prison or someone living elsewhere to receive or provide care (see p64);
- it is occupied by a care leaver (see p65);
- it is owned by someone who has died (see p65);
- its occupation is prohibited by law (see p65);
- it is owned by a public sector housing authority pending demolition (see p65);
- it is being kept for occupation by a minister of religion (see p65);
- it was last occupied by a student (see p65);
- it has been repossessed following a mortgage default (see p66);
- it was last occupied together with certain agricultural lands (see p66);
- it is held by a trustee in bankruptcy (see p66);
- it is part of the same premises as, or situated within the same 'curtilage' as, another dwelling and is difficult to let separately (see p66);
- the sole liable person is a student (see p67).

## **Exempt unoccupied dwellings**

### **Unoccupied new dwelling**

A dwelling that is unoccupied and unfurnished is exempt for up to six months if:<sup>67</sup>

- less than six months have elapsed since the effective date of the first entry on the valuation list; *and*
- there was no entry on the valuation list immediately before that effective date.

### **Unoccupied dwelling undergoing structural repair, improvement or reconstruction**

An unoccupied dwelling is exempt if it cannot be lived in because, since the last occupation date, it has been undergoing, or has undergone, structural alteration or major repair work to make it habitable.<sup>68</sup>

The lack of occupation must be because of the work being carried out. If the dwelling is occupied, it is not exempt. The exemption may last for 12 months after the dwelling was last occupied, or (if sooner) for six months after the major repair work or alteration was substantially completed. The property may remain furnished.

The test is one of fact and the existence of an exemption will not normally justify removal of a dwelling from the valuation roll, but the possibility of cases existing 'in which the works are so extensive and so prolonged or where the

essential physical characteristics of a house were lost' resulting in the property ceasing to exist as a dwelling house 'while the works are carried out' has been recognised (see Chapters 2 and 3).<sup>69</sup> A property undergoing repairs will not ordinarily be regarded for the purposes of valuation for rating as having ceased to be a dwelling house. Much will depend upon the nature of the works, their duration, and whether the property retains the basic physical characteristics of a dwelling house during the course of them. Questions of fact and degree are likely to arise as to whether the dwelling house has ceased to exist, there being cases where the works to a house are so extensive and are required to be so prolonged or physical characteristics have been lost so that the property ceases to count as a dwelling.<sup>70</sup>

### **Unoccupied dwelling last occupied by a charity**

An unoccupied dwelling last occupied by a charitable body is exempt for up to six months if it was last occupied to further the charity's objectives.<sup>71</sup> 'Charitable' has the same meaning as in income tax law. Any period of occupation for less than six weeks is disregarded.<sup>72</sup> The property may remain furnished.

### **Unoccupied and unfurnished dwelling**

Unoccupied and unfurnished dwellings are exempt for up to six months from the end of the last period of six weeks or more during which the dwelling was occupied or furnished.<sup>73</sup>

### **Dwelling last occupied by someone in prison, or living elsewhere to receive or provide care**

An unoccupied dwelling is exempt indefinitely if it was last occupied as the sole or main residence (see p77) of someone who continues to be liable for council tax, and since the last day of occupation s/he is:

- disregarded for the purpose of a council tax discount because she is in prison or detention, or is in a hospital, care home or certain care hostels in Scotland, England or Wales (see Chapter 7); *or*
- receiving personal care elsewhere because of her/his old age, disablement, illness, past or present alcohol or drug dependence, or past or present mental illness or disorder; *or*
- providing personal care elsewhere to someone who needs it because of old age, disablement, illness, past or present alcohol or drug dependence, or past or present mental illness/disorder.<sup>74</sup>

Any period of occupation of less than six weeks since the last day of occupation is disregarded. The property may remain furnished.

A care home service is one covered by the Schedule 12 of the Public Services Reform (Scotland) Act 2010.<sup>75</sup>

### **Dwelling occupied by a carer leaver**

A dwelling is exempt if it is occupied exclusively by one or more care leavers.<sup>76</sup> You are a care leaver if you are at least 18 years old but not yet 26 years old and were previously in the care of a local authority (at age 16 or subsequently). Dwellings jointly occupied by one or more care leavers and other specified persons (including students and persons under 18) are also exempt.<sup>77</sup>

### **Dwelling owned by someone who has died**

To be exempt, the dwelling must be no one's sole or main residence (see p77). Additionally, any liability to pay council tax must fall under the estate of the deceased person.<sup>78</sup> In such cases, the dwelling is exempt:

- indefinitely if no grant of confirmation to the estate of that person has been made; *or*
- for up to six months from the date such a grant is made,

The property may remain furnished.

### **Dwelling in which occupation is prohibited**

If it is prohibited by law to occupy a dwelling, that dwelling is exempt indefinitely.<sup>79</sup> The property may remain furnished. The fact that such a property is actually occupied should not make it ineligible for the exemption.

It is also exempt if it is being kept unoccupied because legal action is underway to prohibit its occupation or to acquire it under a compulsory purchase order. In these circumstances, if the dwelling is actually occupied, it is not exempt. It may remain furnished.

### **Unoccupied dwelling owned by a housing body pending demolition**

A dwelling which is owned by a local authority or registered social landlord and is kept unoccupied pending demolition is exempt.<sup>80</sup> It may remain furnished.

### **Dwelling held for a minister of religion**

A dwelling, such as a manse, which is no one's sole or main residence (see p77), is exempt indefinitely if it is being held by, or on behalf of, any religious body to be available for occupation by a minister of religion as a residence from which to perform the duties of her/his office.<sup>81</sup> The property may remain furnished.

### **Student's unoccupied dwelling**

An unoccupied dwelling which is a student's main residence and which was last occupied by a student(s) is exempt for up to four months from the last day it was occupied for a period of six weeks or more.<sup>82</sup> This applies, for example, to the student's term-time accommodation during vacations if the accommodation remains unoccupied during that period. The property may remain furnished.

### **Dwelling repossessed by a mortgage lender**

A dwelling which is no one's sole or main residence (see p77) is exempt indefinitely if it has been formally repossessed by a mortgage lender.<sup>83</sup> The property may remain furnished.

### **Dwelling last occupied with agricultural lands**

An unoccupied and unfurnished dwelling is exempt indefinitely if it was last used and occupied with the land on which it is situated. The land must be:<sup>84</sup>

- agricultural or pastoral; *or*
- woodlands, market gardens, orchards, allotments or allotment gardens; *or*
- used for the purpose of poultry farming and exceeding one-tenth of a hectare.

### **Dwelling held by a trustee in bankruptcy**

A dwelling which is no one's sole or main residence (see p77) is exempt indefinitely if the only person who would be liable is a bankruptcy trustee.<sup>85</sup>

### **Unoccupied dwelling that is difficult to let separately**

An unoccupied dwelling, such as an empty 'granny flat' or staff accommodation, is exempt indefinitely if:<sup>86</sup>

- it forms part of premises which include another dwelling; *or*
- it is situated within the 'curtilage' of another dwelling; *and*
- it is difficult to let separately from that other dwelling; *and*
- the person who would be liable for it has her/his sole or main residence in that other dwelling.

The property may remain furnished.

### **Unoccupied dwelling for which the sole liable person is a student**

A dwelling which is no one's sole or main residence (see p77) is exempt indefinitely if the person who would be liable is a student for the purpose of a council tax discount (see p109).

If there are joint owners/joint tenants, they must all be students.<sup>87</sup> The property may remain furnished.

### **Exempt occupied dwellings**

An occupied dwelling is exempt if it:<sup>88</sup>

- is only occupied by one or more students, school or college leavers or under-18-year-olds (see p67);
- is occupied by a student or a student's spouse (see p67);
- is a housing association 'trial' property for older people or people with disabilities (see p67);
- is a students' hall of residence (see p67);
- is armed forces accommodation (see p67);



- is visiting forces accommodation (see p68);
- includes garages, carports and storage sheds (see p68);
- is occupied by a 'severely mentally impaired' person (see p68);
- is 'prescribed housing support accommodation' (see p68).

### **Dwelling occupied only by students or under-18-year-olds**

A dwelling is exempt indefinitely if it is not the sole or main residence (see p77) of anyone other than a student for the purpose of a council tax discount (see p109) or a person under 18, and it is occupied by at least one such person.<sup>89</sup> Also included is a student's spouse or dependant who is not a British citizen and who is prevented by the Immigration Rules from either claiming benefits or working in the UK.<sup>90</sup>

### **Temporary dwelling for older or disabled people owned by a registered housing association**

A dwelling owned by a registered housing association is exempt indefinitely if:

- it is not the sole or main residence (see p77) of any person; *and*
- it is for people over pension age or with a disability who are likely in the future to have their sole or main residences in other dwellings provided by the housing association.

This provides an exemption for trial dwellings for older or disabled people who are likely to live in other property owned by the association in the future. In practice, most local authorities do not charge council tax for the trial period while the person is still liable elsewhere.

### **Halls of residence**

A dwelling is exempt if it is, or is part of, a hall of residence provided predominantly to accommodate students and which:<sup>91</sup>

- is owned and managed by a prescribed educational institution for the purpose of a council tax discount; *or*
- is the subject of an agreement allowing a prescribed educational institution to nominate the majority of the people who are to occupy the accommodation.

The fact that a student hall of residence may be used for commercial lettings between terms does not affect entitlement to an exemption providing its predominant purpose remains the accommodation of students.<sup>92</sup> The decision in *Sulets v Leicester City Council* (see p59) has yet to be tested in Scotland. Student halls may also be classified differently under the category 'university buildings'.

### **Armed forces accommodation**

An occupied or unoccupied dwelling is exempt indefinitely if it is:<sup>93</sup>

- owned by the Secretary of State for Defence; *and*
- held for the purposes of armed forces accommodation.

The local authority receives compensating payments for these dwellings.

#### **Visiting forces accommodation**

A dwelling is exempt indefinitely if a member of a visiting force or her/his dependant (but not a dependant who is a British citizen or is ordinarily resident in the UK) would be liable.<sup>94</sup>

#### **Garages, carports and storage sheds**

Certain garages, carports, car parking spaces and premises used for storing domestic items, including cycles and similar vehicles, are considered to be dwellings (see p16). They are exempt indefinitely from council tax.<sup>95</sup>

#### **Dwelling occupied by a 'severely mentally impaired' person**

A dwelling is exempt if it is only occupied by a person(s) who is 'severely mentally impaired', as defined for the purposes of council tax discount (see p113).<sup>96</sup>

A dwelling is also exempt if it is occupied by at least one severely mentally impaired person and one or more students or relevant persons (see p109).<sup>97</sup>

#### **Prescribed housing support accommodation**

A dwelling is exempt if it falls into the category of 'prescribed housing support accommodation'.<sup>98</sup> In order to be exempt:

- the dwelling must be the residence of at least one person who is a tenant, sub-tenant or who has a licence to occupy the dwelling; *and*
- a registered prescribed housing support service must be provided to at least one licensee, tenant or subtenant of the dwelling; *and*
- all the residents must share the use of a kitchen, bathroom, shower room or toilet room, and these must also be shared with at least one other person who is not resident in the dwelling.

A dwelling is not exempt if each resident has exclusive use of a kitchen and a bathroom/shower room (either containing a toilet or if there is a separate toilet which all the residents can use).

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## **3. How exempt dwellings are identified**

Local authorities must take reasonable steps each financial year to establish whether any dwellings in their area are exempt from council tax for any period during the year.<sup>99</sup> Most are likely to carry out periodic postal surveys and make use of other sources of information, such as the electoral roll and their benefit records. Most local authorities also carry out regular visits to unoccupied exempt dwellings.

If the local authority has no reason to believe that a particular dwelling will be, or was, exempt, it will assume it is a chargeable dwelling for council tax billing purposes.<sup>100</sup> Alternatively, if it has reason to believe that a particular dwelling will

be, or was, exempt for a period during the course of the year, it must make that assumption for council tax billing purposes.<sup>101</sup>

## 4. Notification of exemption

If the local authority has assumed that a dwelling is exempt, it must write to the person who would otherwise be liable.<sup>102</sup> The notification must be made as soon as is reasonably practicable.<sup>103</sup> The requirement does not apply in Scotland if:<sup>104</sup>

- the otherwise liable person is a housing body; *or*
- the dwelling is a separate garage, carport or storage shed.

The local authority should also supply a statement that:<sup>105</sup>

- shows the valuation band for the dwelling;
- summarises how to make a proposal for altering the valuation list;
- in Scotland, shows the amounts set as council tax and Scottish Water charges;
- in England and Wales, specifies the local authority's estimate of the amount of council tax (or the actual amount if the year is over) which would have been payable, disregarding any disability reduction, discount, transitional relief (in Wales) or council tax reduction that may have been awarded;
- summarises the most common classes of dwelling which are exempt;<sup>106</sup>
- in Scotland, summarises your obligation to correct any incorrect assumptions the local authority may have made in awarding the exemption, and includes the penalty which may be imposed if this obligation is not met.

The above information need not be given if it was already provided when the scheme was introduced or on any bill ('demand notice').<sup>107</sup> If there is more than one potentially liable person, the local authority only needs to write to one of them.<sup>108</sup> In England and Wales, a taxpayer relies upon assurances that a dwelling is exempt and where a local authority subsequently removes an exemption without justification or because it has made an error, a taxpayer may have a case to resist repayment on the basis that an 'estoppel' in law is created. This is a doctrine in the law of equity that enables certain claims to be resisted as a result of previous representations and promises made. Professional advice should be sought in this situation.<sup>109</sup>

### The duty to correct false assumptions

If you have been notified that the dwelling is, or will be, exempt, you have a duty to tell the local authority if there is reason to believe that this is not the case. The local authority should be notified in writing within 21 days.<sup>110</sup>

If two or more people are jointly liable to pay council tax on a dwelling, they both have a duty to notify the local authority. Only one of them, however, has to supply the information for this obligation to be met.<sup>111</sup>

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## 5. Penalties

The local authority has the discretion to impose a penalty of £70 (in England) or £50 (in Wales and Scotland) on a liable person who fails to notify it that her/his dwelling is no longer exempt. There are higher penalties for failing to supply information requested by the local authority for council tax purposes.<sup>112</sup>

Such penalties are not criminal convictions, but if unpaid can be recovered through the magistrates' court (sheriff court in Scotland) in the same way as unpaid sums of council tax.

Each time the local authority repeats the request and the person fails to supply the information, a further £280 penalty (in England) or £200 (in Wales and Scotland) can be imposed.<sup>113</sup>

You can appeal against the imposition of a penalty,<sup>114</sup> although English and Welsh local authorities have the discretion to quash the penalty beforehand.<sup>115</sup> In England and Wales, you appeal directly to the valuation tribunal (see p263). In Scotland, an appeal can be made to the valuation appeal committee by writing to the local authority. The local authority should pass the appeal on to the committee. A Scottish local authority may revoke the imposition of a penalty if you have a reasonable excuse for the failure.<sup>116</sup> For more information about appeals, see Chapter 11.

In practice, penalties are relatively little used as they cannot be recovered through the courts while an appeal against the penalty is outstanding. As a result, few local authorities consider enforcement of penalties worth the administrative time and effort involved to recover them.

A local authority may also impose a larger penalty as an alternative to prosecution for a criminal offence of falsely supplying information under offences created following the Local Government Finance Act 2012 (see Chapter 5).<sup>117</sup>

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## 6. Appeals

If the local authority decides that the dwelling is not exempt, you can appeal in writing to the local authority if you are an 'aggrieved person'.<sup>118</sup> There is no time limit for making such appeals. An '**aggrieved person**' is someone who would be liable to pay the tax if the dwelling were not exempt or s/he is the owner (if different). The appeal letter should give the reasons why the dwelling should be exempt. The local authority has two months in which to answer.<sup>119</sup>

Exemptions can be backdated to the date the qualifying conditions for the exemption were first met, the beginning of the scheme or when the particular exemption was first introduced, whichever is the latest. There is no requirement to show 'good cause' for the backdating.



If an exemption is not granted, or if the local authority fails to answer within two months of receiving the appeal, a further appeal can be made.<sup>120</sup> In theory, the local authority may commence enforcing payment of the original bill while the appeal is outstanding, but once a formal appeal has begun, the local authority should suspend recovery and a court may also order a stay on proceedings (see p272).

In an increasing number of cases, billing authorities have removed an exemption which has previously been awarded and recognised for more than one financial year. If this has happened to you, appeal to the tribunal.

In **England and Wales**, a further appeal can be made by writing directly to the Valuation Tribunal for England or the Valuation Tribunal for Wales. This should normally be made within two months of the date the local authority notified you of its decision, or within four months of the date when the initial written representation was made if the local authority has not responded. The president of the tribunal has the power to allow an out-of-time appeal if you have failed to meet the appropriate time limit because of reasons beyond your control.

In **Scotland**, a further appeal is made by writing again to the local authority. The local authority should pass the appeal on to the secretary of the relevant local valuation appeal committee. The appeal must be made within four months of the date on which the grievance was first raised with the local authority in writing. There is no power to consider an out-of-time appeal.

See Chapter 11 for more information about appeals.

## Notes

- 1 **EW** s2(2)(a) LGFA 1992  
s71(2)(a) LGFA 1992

### 1. Exempt dwellings in England and Wales

- 2 As amended from 1 April 2013 by CT(ED)(E)(A)O 2012
- 3 CT(ED)O
- 4 *Burnip v Birmingham City Council* [2013] PTSR 117; *R (Hardy) v Sandwell MBC* [2015] PTSR 1292
- 5 Art 2 CT(ED)(E)(A)O 2012; s11A LGFA 1992
- 6 *Olanike Baiyelo v Corkish (LO)* Appeal No.5690727898/084CAD, 15 May 2017

- 7 Art 2 (2) CT(ED)O, as amended by CT(ED)(A)O
- 8 Art 2 (2) CT(ED)O, as amended by CT(ED)(A)(E)O
- 9 *Ealing LB and others v Notting Hill Housing Trust and another* [2015] All ER (D) (Feb)
- 10 Class B CT(ED)O, as amended by art 4(a) CT(ED)(A)O
- 11 *Ealing LB and others v Notting Hill Housing Trust and another* [2015] All ER (D) (Feb)
- 12 *Ealing LB and others v Notting Hill Housing Trust and another* [2015] All ER (D) (Feb) per Mostyn, J
- 13 Appendix 1 'Class B: Council Tax Exemptions', *Council Tax Information Newsletter*, DCLO, 19 March 2015

- 14 Class C CT(ED)O
- 15 Class D CT(ED)O
- 16 s6 LGFA 1992
- 17 CT(ED)O, as amended by art 4(b) CT(ED)(A)O
- 18 Class H CT(ED)O
- 19 Class E CT(ED)O
- 20 Parliamentary Answer given by Dr Alan Whitehead, Under-Secretary of State for Transport, Local Government and the Regions, 24 January 2002
- 21 Class F CT(ED)O, as amended art 4(d) CT(ED)(A)O
- 22 *Tew v Lewisham LBC* [2018] Appeal No.5690M202173084C/4, 1 February 2018
- 23 Executor for *W Anderson v West Berkshire Council* [2019] Appeal No.0340M254315/281C, 22 August 2019
- 24 Valuation Tribunal Service, *Valuation in Practice*, issue No.19, November 2010
- 25 Class G CT(ED)O;  
E as amended by art 2(2) CT(ED)(A)(E)O
- 26 *The Owner v Lewisham LBC* [2014] VTE Appeal Nos.5690M118693/084C and 5690M118694/084C, 16 September 2014
- 27 *Watson v Rhondda Cynon Taff BC* [2001] EWHC 913 (Admin)
- 28 *JF v Hyndburn BC* [2015] App No.2330M122093/254C citing *Pall Mall Investments (London) Ltd v Gloucester City Council* [2014] EWHC 2247 (Admin)
- 29 *Taylor v The County of Herefordshire DC* [2013] VTE Appeal No.1850M84073/221C
- 30 Class H CT(ED)O
- 31 *DC v Waveney DC* [2018] Appeal No.3535M215822/037C, 29 August 2018
- 32 *DC v Waveney DC* [2018] Appeal No.3535M215822/037C, 29 August 2018
- 33 *Appellant v Waverley BC (Billing Authority)* [2019] Appeal No.3650M247075/281C, 25 March 2019
- 34 Class I CT(ED)O
- 35 Class J CT(ED)
- 36 *A v Trafford MBC* [2014] Appeal No.4245M125453/254C, 15 January 2015
- 37 Class K CT(ED)O
- 38 Class L CT(ED)O
- 39 Class M CT(ED)O
- 40 Class M CT(ED)O
- 41 *Stowe School Ltd v Aylesbury Vale DC* [2012] RA 111
- 42 *Sulets v Leicester City Council* [2017] Appeal No.2465M197400/037C, 7 October 2017
- 43 Class N CT(ED)O
- 44 *Kingsley v Barnet Magistrates Court and Another* [2009] EWHC 464 (Admin)
- 45 Class N CT(ED)O
- 46 VOA, Council Tax Manual, Practice Note No.2, para 28
- 47 *Jagoo v Bristol City Council* [2017] EWHC 926 (Admin)
- 48 *A v Eastbourne BC* [2014] VTE Appeal No.M0130075, 21 October 2014
- 49 *Clews v Sheffield City Council* [2019] Appeal No.4420M255934/282C, 9 August 2019
- 50 Class O CT(ED)O
- 51 VOA, Council Tax Manual, Practice Note No.2, para 30
- 52 Class P CT(ED)O
- 53 Class Q CT(ED)O, as amended by The Council Tax (Exempt Dwellings) (Amendment) Order 1993 No.150
- 54 Class R CT(ED)O
- 55 Class S CT(ED)O
- 56 Class T CT(ED)O
- 57 Class U CT(ED)O
- 58 CT(ED)O
- 59 *Appellant v Hounslow LBC* [2015] Appeal No.M0093133, 26 February 2015
- 60 *Andrew v Blackpool BC* [2020] Appeal No.M0251474, 14 February 2020
- 61 Class W CT(ED)O
- 62 CT(ED)O
- 63 Class W CT(ED)(A)(E)O 2005

## 2. Exempt dwellings in Scotland

- 64 CT(ED)(S)(A)O 2012 as amended by the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 and the Council Tax (Exempt Dwellings) (Scotland) Order 2018
- 65 Art 2 CT(ED)(S)(A)O 2012
- 66 CT(ED)(S)O 1997
- 67 Sch 1 para 1 CT(ED)(S)O 1997
- 68 Sch 1 para 2 CT(ED)(S)O 1997, as amended by the Council Tax (Exempt Dwellings) (Scotland) Amendment (No.2) Order 1999 No.140
- 69 *Assessor Tayside Joint Valuation Board v Decision by the valuation appeal committee for Perth and Kinross* [2018] SC 106
- 70 *Assessor Tayside Joint Valuation Board v Decision of the valuation appeal committee for Perth and Kinross* [2018] SCLR 316, para 17
- 71 Sch 1 para 3 CT(ED)(S)O 1997

- 72 Art 2 CT(ED)(S)O 1997
- 73 Sch 1 para 4 CT(ED)(S)O 1997
- 74 Sch 1 para 5 CT(ED)(S)O 1997
- 75 Class E CT(ED)O, as amended by art 2 and Sch 2 para 17(a) Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 No.2581
- 76 Sch 1 para 10(a)(iii) CT(ED)(S)O, as amended by art 2 Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2018 No.45
- 77 Policy note to the Council Tax (Exempt Dwellings) (Scotland) (Amendment) Order 2018 No.45
- 78 Sch 1 para 6 CT(ED)(S)O 1997
- 79 Sch 1 para 7 CT(ED)(S)O 1997
- 80 Sch 1 para 8 CT(ED)(S)O 1997
- 81 Sch 1 para 9 CT(ED)(S)O 1997
- 82 Sch 1 para 11 CT(ED)(S)O 1997
- 83 Sch 1 para 13 CT(ED)(S)O 1997
- 84 Sch 1 para 14 CT(ED)(S)O 1997
- 85 Sch 1 para 21 CT(ED)(S)O 1997
- 86 Sch 1 para 19 CT(ED)(S)O 1997
- 87 Sch 1 para 12 CT(ED)(S)O 1997
- 88 CT(ED)(S)(A)O
- 89 Sch 1 para 10(a)(iii) and (iv) CT(ED)(S)O 1997; see also the Education (Graduate Endowment and Student Support) (Scotland) Act 2001
- 90 Sch 1 para 10(a)(ii) CT(ED)(S)O 1997
- 91 Sch 1 para 16 CT(ED)(S)O 1997
- 92 *Assessor for Lothian Region v Heriot-Watt University* [1998] SC 736
- 93 Sch 1 para 17 CT(ED)(S)O 1997
- 94 Sch 1 para 22 CT(ED)(S)O 1997
- 95 Sch 1 para 20 CT(ED)(S)O 1997
- 96 Class U CT(ED)(S)O 1997
- 97 CT(ED)O
- 98 CT(ED)(S)O 1997 was amended by the CT(ED)(S)(A)O 2006. Such a dwelling has the same meaning as accommodation defined by s91(8) Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002, registered by the Scottish Commission for the regulation of care as a prescribed housing support service under the Regulation of Care (Scotland) Act 2001.

### 3. How exempt dwellings are identified

- 99 **EW** Reg 8 CT(AE) Regs  
§ CT(ED)(S)O 1992
- 100 **EW** Reg 9(1) CT(AE) Regs  
§ Reg 7 CT(AE)(S) Regs
- 101 **EW** Reg 9(2) CT(AE) Regs  
§ Reg 8 CT(AE)(S) Regs

### 4. Notification of exemption

- 102 **EW** Reg 10(1) CT(AE) Regs
- 103 **EW** Reg 10(2) CT(AE) Regs  
§ Reg 9 CT(AE)(S) Regs
- 104 **EW** Reg 10 CT(AE) Regs  
§ Reg 9 CT(AE)(S) Regs
- 105 **EW** Reg 10 CT(AE) Regs  
§ Reg 9 CT(AE)(S) Regs
- 106 **EW** Reg 10(3) CT(AE) Regs  
§ Reg 9 CT(AE)(S) Regs
- 107 **EW** Reg 10 CT(AE) Regs  
§ Reg 9 CT(AE)(S) Regs
- 108 **EW** Reg 10 CT(AE) Regs  
§ Reg 9 CT(AE)(S) Regs
- 109 See *Ellis v Lambeth LBC* [1999] EWCA Civ 1807; *Tallington Lakes Ltd* [2007] EWHC 1955 (Ch)
- 110 **EW** Reg 11 CT(AE) Regs
- 111 **EW** Reg 11 CT(AE) Regs  
§ Reg 10 CT(AE)(S) Regs

### 5. Penalties

- 112 LGFE(SP)O
- 113 **EW** Sch 3 LGFA 1992; LGFE(SP)O  
§ s97(4) and Sch 3 LGFA 1992
- 114 **EW** s14(2) and Sch 3 LGFA 1992  
§ s97(4) and Sch 3 LGFA 1992
- 115 **EW** Sch 3 para 1 LGFA 1992
- 116 s97(4) and Sch 3 LGFA 1992
- 117 **EW** s14 LGFA 2012

### 6. Appeals

- 118 **EW** s16 LGFA 1992
- 119 **EW** s16 LGFA 1992  
§ s81 LGFA 1992
- 120 **EW** s16 LGFA 1992  
§ s81 LGFA 1992

## Chapter 5

# Liability

### This chapter covers:

1. Who is liable (below)
2. Who is a resident (p77)
3. When the owner is always liable (p82)
4. Joint liability (p86)
5. Change of circumstances (p89)
6. Backdating liability (p89)
7. How the liable person is identified (p90)
8. Appeals (p92)

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## 1. Who is liable

Council tax is payable on any dwelling which is not exempt. See Chapter 4 for more information on exemptions. Normally, the person liable to pay council tax is an adult resident of the dwelling. To be liable, the person must have her/his 'sole or main' residence in the dwelling and have a right to occupy it.<sup>1</sup> To determine who is liable to pay council tax, it is necessary to consult the 'hierarchy of liability' (see p75).<sup>2</sup> This lists different categories of occupier, based on security of occupancy, including owners, tenants, licensees and squatters. Normally, the person(s) whose sole or main residence is in a dwelling and who has the most secure interest in it will be the liable taxpayer(s) and the person to whom the council tax bill will be sent.

Working down the list, as soon as a description is reached which applies to someone in respect of the dwelling in question, that person is the liable person.<sup>3</sup> This will normally be an owner-occupier or a council, housing association or private tenant. A tenant is not liable, however, if the landlord lives in the same dwelling. If no one is solely or mainly resident (see p77) in the dwelling, the non-resident owner is liable. In certain instances, however, the owner is always liable (see p82). If more than one person fits the first description that applies, they will normally be jointly liable (see p86).

For the purpose of determining the liable person on any day, the state of affairs at the end of the day is assumed to have existed throughout that day (see p76).<sup>4</sup>



In certain cases, the liable person may also be a person who is disregarded for the purpose of a discount (see Chapter 7). The rules on discounts are separate and do not affect liability, except in some cases where they affect 'severely mentally impaired' people and students who would otherwise be held jointly liable (see p88).

Following the death of the owner, the deceased's personal representative may become liable in her/his capacity as owner of the estate, but the dwelling is likely to be exempt until probate or letters of administration are obtained if unoccupied. See Chapter 4 for more information.

**Note:** you do not have to pay council tax unless a bill has been sent with your name on it or, if your name is not known, the 'council taxpayer' (see p184), unless (in Scotland) you are jointly liable with someone who has been billed.

### *Hierarchy of liability in England and Wales*

1. A resident with a freehold interest in the whole or any part of the dwelling.
2. A resident with a leasehold interest (including an assured tenancy or assured shorthold tenancy) in the whole or any part of the dwelling which is not inferior to another such interest held by another resident.
3. A resident statutory tenant,<sup>5</sup> secure tenant<sup>6</sup> or introductory<sup>7</sup> tenant of the whole or any part of the dwelling.<sup>8</sup>
4. A resident with a contractual licence to occupy the whole or any part of the dwelling.
5. A resident (including a squatter).
6. A person who is a mortgagee in possession of the owner's interest in the dwelling. In the case of secure or introductory tenants, and a mortgagee in possession, a date for these to come into force has yet to be appointed.<sup>9</sup>
7. A non-resident owner – ie, the person who has the inferior (shortest) lease granted for a term of six months or more of the whole, or any part, of the dwelling. If there is no such leaseholder, the freeholder is the owner.<sup>10</sup> An owner of a hereditament is further defined as the person entitled to possession of it under the Local Government Finance Act 1988.<sup>11</sup>

### *Hierarchy of liability in Scotland*<sup>12</sup>

1. A resident owner of the whole or any part of the dwelling.
2. A resident tenant of the whole or any part of the dwelling.
3. A resident statutory tenant,<sup>13</sup> resident statutory assured tenant<sup>14</sup> or resident secure tenant<sup>15</sup> of the whole or any part of the dwelling.<sup>16</sup>
4. A resident sub-tenant of the whole or any part of the dwelling.
5. A resident of the dwelling or:
  - a sub-tenant of the whole or any part of the dwelling under a sub-lease granted for a term of six months or more;
  - a tenant, under a lease granted for a term of six months or more, of any part of the dwelling which is not subject to a sub-lease granted for a term of six months or more;
  - an owner of any part of the dwelling which is not subject to a lease granted for a term of six months or more.

In Scotland, in addition to council tax, Scottish Water charges are payable for any dwelling which is not exempt, except if:

- Scottish Water does not provide a supply of water to the dwelling; *or*
- the water is supplied by meter; *or*
- Scottish Water is under an obligation to provide a supply free of charge.

## Caravans and boats in England and Wales

The owner of a caravan or houseboat is liable for council tax except for the days when someone other than the owner is resident and so becomes liable for those days.<sup>17</sup> The normal council tax definitions of 'resident' (see p77) and 'owner' apply in the case of residential caravans or boats, but the definition of 'owner' is extended to include:<sup>18</sup>

- the person who has possession under any hire purchase or conditional sale agreement; *or*
- the person entitled to the property apart from any mortgage or bill of sale which applies to it.

Moveable structures such as transportable caravans (not statics) and houseboats may be relocated during the course of a year and questions may be raised as to whether they should be classed as hereditaments and be liable for council tax (see Chapter 2). For both caravans and houseboats, it may be necessary to examine the degree of permanence at any one location. Guidance provides the following.<sup>19</sup>

'A formal pitch or formal mooring constructed or laid out, perhaps with the provision for services, will constitute a hereditament. This should be distinguished from a temporary wayfarer's pitch eg roadside or a mooring on a mud flat or natural river bank which would have to be occupied for a sufficient length of time for it to constitute a hereditament.'

A key issue is the length of time that a caravan or houseboat may remain in any one location. Under the old rates system (from which the concept of the hereditament is derived), rateable occupation and liability to pay did not arise for a resident who was only occupying for a matter of days or weeks or even months.<sup>20</sup>

## Daily liability

Liability to pay the tax arises on a daily basis. The situation at the end of the day is assumed to have existed throughout the day.<sup>21</sup> The amount payable for the day is the annual amount set by the local authority for that year for dwellings in the relevant valuation band, divided by the number of days in the financial year (365 or 366).

## 2. Who is a resident

Council tax is usually payable by someone who is resident in the dwelling. If no one is resident, the non-resident owner is liable. To count as 'resident' you must:

- be aged 18 or over; *and*
- be solely or mainly resident in the dwelling (see below).<sup>22</sup>

If everyone who lives in the dwelling is aged under 18, the dwelling is exempt from council tax.

### Sole or main residence

If a potentially liable person has more than one home, the local authority must decide which is her/his main residence. The concept of 'sole or main residence' is not defined in legislation, but has been considered by the courts.

### Where the taxpayer lives (England and Wales)

The Court of Appeal decision in *R (Williams) v Horsham District Council* clarifies the approach to be taken.<sup>23</sup> The starting point for deciding sole or main residence should be section 6(5) of the Local Government Finance Act 1992, where 'sole or main residence' refers to premises in which the taxpayer actually resides. Usually, a person's main residence would be the dwelling that 'a reasonable onlooker' with knowledge of the facts would regard as that person's home at the time. The test might not always be easy to apply and the answer would depend on the particular circumstances; it would be a matter of fact and degree.

Establishing a 'reasonable onlooker' principle sets an objective test to be applied in every case and may well differ from what a local authority would conclude. Where a person *actually* lives in any financial year becomes key to determining residence, not a hypothetical question about the right to return in future years or at a period later in the same financial year.

Following this case, it is clear that the starting point for any appeal is section 6 and the question of who actually lives in the dwelling. By emphasising section 6, the Court of Appeal confirmed that resident tenants, licensees and even trespassers should normally be placed ahead of non-resident owners in terms of liability for council tax. Factors such as voter registration and registration for medical treatment have often been used by valuation tribunals to determine sole or main residence. However, the key question following the *Williams* case is: 'Where does the taxpayer actually live?' Hypothetical questions, such as where a person might move or remain in the event of job loss or serious illness or where s/he might live were tenants to move out, do not, in themselves, determine the answer to this question.

The vice president of the Valuation Tribunal has stated: 'There would be nothing wrong in any council tax payer who owns a number of dwellings so

ordering his affairs as to minimise liability for council tax provided, for the purposes of this discount in issue, there was a genuine change of sole or main residence as part of that process...Billing authorities and the Tribunal have to bear in mind the apparent motivation of the council taxpayer in such circumstances and the burden of proof to establish a change of sole or main residence remains with that taxpayer.<sup>24</sup>

The judgment in *Williams* is particularly important if you have let your principal home to tenants or to someone who normally lives or works abroad. In the case of *Parry v Derbyshire Dales District Council*,<sup>25</sup> the taxpayer lived in Spain and let his cottage to tenants. The High Court held that the taxpayer was resident in Spain for local tax purposes and the fact that the tenant left did not mean that Mr Parry ceased to reside in Spain. The court followed the approach of the Court of Appeal in the *Williams* case and confirmed section 6 of the Local Government Finance Act 1992: setting out a hierarchy of liability based on who is actually resident in the dwelling rather than security of tenure is crucial to determining the liable person for council tax purposes. In some cases, it would follow that a person's home may be different to her/his sole or main residence. 'Home' has been judicially considered the place to which a person has a degree of physical and emotional attachment. The test as to whether a person occupied premises as her/his home is both qualitative and quantitative, and a decision maker must weigh all the relevant facts reasonably.<sup>26</sup>

Following the *Williams* case, a person letting a dwelling to tenants should ensure that the calculation of a bill should relate to when s/he actually moves out of a dwelling, not necessarily when tenants move in.

#### Example

Mr and Mrs Shah live in a house with their 17-year-old daughter. Mrs Shah is the joint owner of the property with her sister, who frequently comes to stay and has a bedroom of her own, but who has her main home elsewhere. The non-resident joint owner is not liable.

If the couple were to separate and Mr Shah to leave the dwelling, Mrs Shah would be liable by herself, but Mr Shah would remain jointly liable for any amount that accrued while living as a couple.

If Mrs Shah were also to leave the dwelling, leaving the daughter as the only person living there, the dwelling may be considered exempt, as it is the sole residence of someone under the age of 18. On the daughter's 18th birthday, she would become the sole liable person as the only resident of the dwelling.

Mrs Shah's sister is not liable as her main residence is elsewhere.

The fact that people may have, for whatever reason, used a dwelling for the purposes of providing a residential postal address does not, in itself, mean that such persons were actually so resident.<sup>27</sup>



Local authorities sometimes treat tenants as still liable if they move out of a property before the end of their tenancy.<sup>28</sup>

Some confusion has arisen in decisions about whether 'presumed periodic tenancies', arising under statute or by contract, may constitute qualifying leasehold tenancies of more than six months and are, therefore, classed as 'surviving' when residents move out (and also in respect of entitlement to housing benefit on a property that is no longer occupied).<sup>29</sup> It has been held that vacating a property did not terminate a tenant's liability to pay council tax which was otherwise due. In *Leeds City Council v Broadley*,<sup>30</sup> the court held the tenancy agreement in question created the equivalent of a single leasehold interest 'granted for a term of six months or more' albeit that the interest was initially fixed for a term of years. The fact it changed to a periodic tenancy afterwards did not affect this. It was only the termination of the tenant's interest in the property which ended liability. This view has been followed at tribunal level.<sup>31</sup>

However, no decisions to date have fully considered the issue in the context of sole or main residence and how it is determined by asking where a person actually lives, as in *Williams*.

In *Branwell v Valuation Office Agency*, the High Court stated: 'The hierarchy in section 6 shows that Parliament decided that liability should depend on residence in, and rights to reside in, a dwelling. That is an intelligible and rational legislative choice. It connects liability with actual enjoyment of the dwelling, or if no one is living in it, with the right to occupy it.'<sup>32</sup>

The key proviso are the words 'if no one is living in it'. Following the *Williams* case, if the former tenant no longer lives in the dwelling and begins living elsewhere and actually has her/his sole or main residence elsewhere, the former tenant can no longer be said to be residing in the dwelling and ceases to be considered as liable under section 6. Once the right to occupy the dwelling is terminated, whether by giving notice and moving out, by abandonment or eviction, and the person begins living elsewhere and establishes another sole or main residence in another dwelling, any liability for council tax at the former home should cease.

Thus, if a tenant vacates a property without proper notice and is settled elsewhere, the landlord becomes liable to pay the council tax during this period of non-occupancy, because the landlord has the remaining material interest and the ultimate right in law to use and occupy the home, and not the former tenant or occupier.

The question of 'sole or main residence' may also be indicated by asking where a person normally sleeps either most or all of the time. In *Sumeghova v McMahon*,<sup>33</sup> the Court of Appeal ruled that the place where a person sleeps was of the most enormous importance in determining where her/his principal or only home was; while it might not be decisive, it would influence any court considerably. While it is normally the case that a person's main residence will be at the matrimonial or family home, there may be exceptions – eg, where a married couple live in separate dwellings.<sup>34</sup>

#### Example

Lewis is the tenant of a flat on an assured tenancy beginning on 1 September and pays council tax from 1 September. He gives notice to his landlord and moves out after Christmas. Lewis moves in with his partner, Mia, at her address in the same billing authority area.

The landlord does not let Lewis's flat immediately and it stands empty. Applying the hierarchy under section 6, as Lewis no longer has residence in the flat, he ceases to have any liability. Instead, Lewis becomes jointly liable to pay council tax with Mia at the address where they live together. The liability for council tax at Lewis's former address falls upon the landlord unless a new tenant or occupier moves in.

If a person has never lived in a dwelling s/he cannot be considered to be resident in it, even if s/he is the owner of the dwelling or has no fixed abode.

#### Where the taxpayer lives (Scotland)

The same approach to residence taken in the *Williams* case (see p77) has been applied in Scotland. In *Highland Council v Highland and Western Region Valuation Appeal Committee*, a taxpayer lived during the week, and some weekends, in a dwelling closer to his job rather than in the dwelling occupied by his wife and family.<sup>45</sup> The Court of Session ruled that the valuation appeal committee was entitled to find that the dwelling where the appellant spent most of his time during the week was his sole or main residence.

In cases where liability may fall upon the landlord, it is essential that the valuation appeal committee establish whether a property has been truly abandoned or is merely temporarily unoccupied, and is able to identify the situation from evidence.<sup>36</sup>

#### Council tax discounts and reductions

The question of sole or main residence is important when calculating discounts (see Chapter 7) and disability reductions (see Chapter 6). Where there is more than one resident adult in a property, the amount of council tax support available is likely to be affected, as well as affecting entitlement to discount if only one adult is left living in the property. The local authority should be informed when a person moves in or out of the property, within 21 days, if it is the case that a change in sole or main residence (based upon the test in *Williams* – see p77) has arisen.

Merely using a property as a postal address to receive mail or keeping property does not constitute residence for council tax purposes.

**Example**

Rita is a pensioner with an adult son Andy who is homeless. He comes to see her from time to time and receives post at the address, but otherwise stays in hostels or with his friends. Andy does not have sole or main residence with Rita for council tax purposes so she is entitled to a single occupier discount.

**Establishing sole or main residence**

In some cases, the local authority does not accept evidence provided by the taxpayer that a person does or does not reside at a particular dwelling. If this is the case, all sorts of evidence can be used – eg, bank statements, utility bills, extracts from official registers, forms of identification and statements from neighbours and professionals who know the situation.

A local authority is expected to act reasonably when assessing evidence. For example, if proof of a tenancy agreement is supported by signatures and addresses of witnesses which are in doubt, the local authority should investigate the details and try to contact the witness, not merely ignore or dismiss the evidence as insufficient or untrustworthy.<sup>37</sup>

If the local authority does not accept the evidence provided, you should make an appeal to the valuation tribunal in England or Wales or to the valuation appeal committee in Scotland.

Witness statements may be used where the local authority refuses to accept your evidence. A witness statement must give your name and address, and you can set down the relevant facts. A local authority that refuses to accept evidence in a witness statement may be liable for breach of statutory duty in civil law.

**Residence in more than one place**

It is possible for a person to have both a sole or main residence and also a residence in another dwelling for discount and other council tax purposes. This has been accepted in an appeal against the imposition of an empty property discount under section 11B of the Local Government Finance Act 1992.<sup>38</sup> Since 2013, an increase in council tax can be imposed upon any dwelling in England continuously empty for two or more years, paid by the owner of the dwelling.<sup>39</sup>

The appellant had occupied the property from time to time for the purposes of renovation and, to a limited extent, had lived inside it. Supporting evidence included a gas bill, a bank statement, a home insurance policy letter, photographs and sundry other documents including an electoral roll form and was supported by a witness statement. Non-occupation should not be inferred simply because the appellant had other addresses for his bank accounts and did not show up on credit checks at the appeal property, or an inconsistency existed with dating in correspondence. The tribunal accepted that the legislation also uses the word 'resident' in other contexts, and from its inception, the possibility that a person

may own one or more properties and pay council tax in respect of both has been a basic feature. The panel identified that the correct test to be an empty property was 'simply whether the appeal property was unoccupied and unfurnished'.<sup>40</sup>

Further recognition of the principle that a person may have two different residences simultaneously is found in other branches of taxation law. In *Frost v Feltham*, it was ruled: 'If someone lives in two houses the question, which does he use as the principal or more important one, cannot be determined solely by reference to the way in which he divides his time between the two'.<sup>41</sup>

It has also been recognised that there are 'an infinity of variations of circumstances to take into account in deciding which was a man's main home. Each case would differ from the other; there might be cases where it was very difficult to decide the question'.<sup>42</sup>

Merely because a couple are married, and one is treated as having a sole main residence at one location, is not sufficient reason in itself to conclude that both spouses share the same sole or main residence.<sup>43</sup>

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## **3. When the owner is always liable**

If there are no residents in the dwelling, the non-resident owner is liable. Additionally, the Secretary of State or Welsh or Scottish ministers have power to specify circumstances in which, even if there are residents, the owner is always liable.<sup>44</sup> The owner (not the residents) is liable for the council tax on:

- care homes and certain hostels providing care and support (see below);
- houses in multiple occupation (see p83);
- second homes with domestic servants (see p86);
- houses of religious communities (see p86);
- residences of ministers of religion (see p86);
- school boarding accommodation in Scotland (see p86);
- accommodation provided to an asylum seeker (see p86).

The owner of a house of multiple occupation is liable even if s/he has no beneficial interest in the property.<sup>45</sup>

### **Care homes and hostels**

An owner is liable to pay council tax on care homes and certain hostels providing care and support that are registered in England under the Care Standards Act 2000.<sup>46</sup>

In Wales, the definition of an owner who is liable to pay council tax on a care home specifies that it is any home within the meaning of the Regulation and Inspection of Social Care (Wales) Act 2016 *or* under section 18 or 19 of the Care



Act or section 35 or 36 of the Social Services and Well-being (Wales) Act 2014 or a hostel within the meaning of paragraph 7 of Schedule 1 of the Act.<sup>47</sup>

In Scotland, the owner of any building in which a care home service provides accommodation, or a private hospital which is not used wholly or mainly as the sole or main residence of a person, is liable for council tax.<sup>48</sup>

## Houses in multiple occupation

A dwelling is classed as a house in multiple occupation if:<sup>49</sup>

- it was originally constructed, or subsequently adapted, for occupation by more than one household; *or*
- each person who lives in it is either:
  - a tenant or licensee able to occupy only part of the dwelling; *or*
  - a licensee liable to pay rent or a licence fee on only part of the dwelling.

Examples include some bedsits, hostels, nurses' homes and long-stay wards in hospitals classed as dwellings. In England and Wales, this can include a dwelling occupied by only one person if the above conditions are met, provided the dwelling was originally constructed, or subsequently adapted, for occupation by multiple households.

The High Court has held: 'the focus must be not upon the state of the premises and not upon the intention of the landlord in letting them, underlying these provisions is a distinction between those houses which are genuinely in shared accommodation by those who have a link between them so as to constitute a single household, as contrasted with those who have no real link between them, as for instance in the example of...effectively a hostel for the homeless.'<sup>50</sup>

The term 'tenant' includes a secure tenant or a statutory tenant. In England and Wales, the normal definition of an owner applies in the case of a house in multiple occupation, except if someone has a leasehold interest. In this case, it must be an interest in the whole dwelling. If this is not the case, the person who has a freehold interest in the whole or any part of the dwelling is liable.<sup>51</sup>

The Housing Act 2004 requires that a landlord of a house in multiple occupation in England or Wales must obtain a licence. This defines a dwelling as a house in multiple occupation if:

- it consists of one or more units of living accommodation that are not self-contained flat(s);
- the living accommodation is occupied by people who do not form a single household and as their only or main residence (or it is treated as such);
- there is no other use of the accommodation – eg, in the case of a student hall of residence or work-related accommodation;
- at least one person occupying the accommodation pays rent;
- two or more of the households who occupy the living accommodation share one or more basic amenities (eg, a kitchen or bathroom) or the living accommodation.

In Scotland, a house of multiple occupation is defined as any living accommodation occupied by three or more people who are not related who share a bathroom or toilet and kitchen.<sup>52</sup>

However, it is important to note that the definitions used for a house in multiple occupation which must be registered and the one for determining a multi-occupation household for council tax purposes are different, although both types of property the two definitions cover will frequently overlap. For council tax, a multi-occupation dwelling merely requires there be two or more tenants or licence holders in occupation of the premises.<sup>53</sup> This is so even though in other legislation a house is not registerable as a house in multiple occupation unless there are three people living in it at the same time. Courts and tribunals have to be careful not to mix up the different definitions when considering council tax issues and must always follow the one that appears in the council tax regulations.<sup>54</sup>

A house in multiple occupation for council tax purposes could, therefore, be a self-contained flat occupied by people who do not form a single household, or a converted building containing one or more self-contained units, occupied by people who do not form a single household. The High Court held that the correct test to be applied when addressing whether a building had been constructed or adapted for use as separate living accommodation was an objective 'bricks and mortar' test which looked at the reality of what had been constructed and/or how it had been adapted.<sup>55</sup> This was an objective, not a subjective, test and therefore the intention of use, whether actual or prospective, was irrelevant to the determination.

The tribunal will look for evidence of adaptation – eg, if separate locks have been fitted to the rooms of residents and they have their own keys and facilities.

### **Exclusive possession**

When deciding the status of residents and the degree of exclusive possession (ie, whether they only occupy part of the dwelling), tribunals can look beyond the tenancy or licence agreement and examine the actual facts.<sup>56</sup> This is very important where the evidence and the accuracy of documents produced at the hearing are challenged – eg, parties may have used standard pre-printed tenancy forms which do not reflect the actual legal position between them. However, documents alone should not decide that a property is a house in multiple occupation simply because there are a number of tenants in the dwelling and the owner retains the use of one room – eg, for storing furniture which the tenants do not wish to use.

In the case of *R (on the application of Goremsandu) v Harrow London Borough Council*, the High Court ruled that the test to apply is whether the rent paid gives the tenants the right to occupy only part of the dwelling, or whether it related to the occupation of the house as a whole.<sup>57</sup> The key issue was whether, ultimately, the tenants had exclusive possession of the whole house. In this case, the owner's furniture was kept locked in the conservatory which meant the tenants could not

use the conservatory. It was decided that this fact was not sufficient, since the statutory test that had to be applied was whether a tenant was a 'tenant of part only of the dwelling'. They remained tenants of the conservatory even though, in fact, they were unable to use or readily gain access to it. The only items of furniture stored in the conservatory were those that the tenants were paying rent for and, since the terms of the tenancy had not been varied, they were entitled to ask for the key at any time and, if they chose to do so, they could exclude the landlord from the conservatory and also exclude her furniture from that area so long as they stored or used the furniture in another location. They were, therefore, tenants of the whole dwelling, including the conservatory.

In another case, a key issue was whether the tenants were responsible for paying rent on the dwelling as a whole.<sup>58</sup> The tribunal had erred in finding that they were not, contrary to what was written in the lease.

The question of what the lease or tenancy agreement says is important but it is not conclusive, in determining exclusive possession, and may not be considered binding on an individual if s/he has not signed it. The lease need not be in writing to be binding but if a written lease has not been signed, then a valuation tribunal is entitled to consider all the relevant evidence and conclude that the property constitutes a house of multiple occupation.<sup>59</sup> An important question may be whether the occupiers made the agreement together with the landlord or made separate arrangements. If the occupiers did not agree a lease together, the house is more likely to qualify in fact and in law as a house in multiple occupation. What a lease or rental agreement says about liability to pay council tax on a dwelling is an important factor, but does not always determine the issue. Exceptions are recognised<sup>60</sup> and a valuation tribunal should not just accept the view of one side on the question of a multiple occupation dwelling – eg, just the opinion of a local authority inspector.<sup>61</sup>

Where residents of a house in multiple occupation are wrongly held liable, evidence from the residents themselves may be crucial. In one case, the Valuation Tribunal for England (VTE) accepted a witness statement from the appellant as to his whereabouts over a disputed period of liability and his evidence that he never signed any tenancy agreement with other occupiers of a property or lived with them as part of the same household.<sup>62</sup> The tribunal rejected as evidence a purported rent book which contained serious discrepancies and was branded as false by the appellant who had actually been living in a different borough for two of the four years in the period of liability in dispute. The VTE accepted the evidence of the appellant given orally, and in a witness statement, as being consistent and arising from a direct knowledge of the facts and the situation of the dwelling during the material time.

Similar principles apply with the submission of evidence to valuation appeal committees in Scotland and any committee which applies the wrong tests and makes errors of fact and law may have its decision overturned by the Court of Session on appeal.<sup>63</sup>

## **Second homes with domestic servants**

A dwelling fits into this category if it is:<sup>64</sup>

- occupied from time to time by the employer who does not live in it as her/his main residence; *and*
- all the residents are either employed in domestic service in the dwelling or are their family members.

## **Religious communities**

For the owner to be liable, the dwelling must be inhabited by a religious community whose main occupation consists of prayer, contemplation, education, the relief of suffering or any combination of these.<sup>65</sup> Monasteries and convents come within this description. Members of such communities may qualify to be disregarded for the purpose of a council tax discount (see p116).

## **Accommodation for ministers of religion**

The dwelling must be inhabited by a minister of religion (of any faith) as a residence from where s/he performs her/his duties of office. If the dwelling is owned by the minister, the minister is liable for council tax. There are exceptions to this rule for English or Welsh dwellings that are owned by a minister of the Church of England who is in receipt of a stipend. In such a case, the liability is transferred to the Diocesan Board of Finance. In Scotland, the body liable for the remuneration of the minister is liable for council tax.<sup>66</sup>

## **School boarding accommodation**

In Scotland, the owner of school boarding accommodation which is specifically included in the definition of a dwelling (see p19) is liable for the council tax.<sup>67</sup>

## **Accommodation occupied by asylum seekers**

Asylum seekers occupying accommodation under section 95 of the Immigration and Asylum Act 1999 are not liable for council tax. The owner is liable.<sup>68</sup>

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## **4. Joint liability**

If two or more people fall into the liable category (eg, joint owners, joint tenants or simply joint residents), they are jointly and severally liable, except if one is severely mentally impaired or a student (see p88).<sup>69</sup>

Additionally, the liable person's partner is jointly liable if s/he is:<sup>70</sup>

- married to or in a civil partnership with the liable person; *or*
- living with her/his partner as a married couple or as if in a civil partnership; *and*
- a resident of the dwelling.



This applies whether or not the partner has a legal interest in the dwelling. The definition of ‘couple’ used to establish joint liability for council tax is similar to that applied with many social security benefits (see CPAG’s *Welfare Benefits and Tax Credits Handbook*.) To be a couple under the social security rules, however, both partners must reside in the same *household*. In the case of council tax, it is only necessary to show that they reside in the same *dwelling*. As it is possible for a single dwelling to contain more than one household, there will be some situations when the two definitions do not coincide. For instance, if a married couple are estranged but continue to live in the same house and have separate households, they are still classed as a jointly liable couple for council tax purposes as they remain married and continue to reside in the same dwelling. However, they are not a couple for council tax reduction (CTR) purposes because they reside in different households. This means that both partners are jointly liable, but each can make a separate claim for reductions based on an apportioned (50 per cent) share of council tax liability and her/his own individual circumstances. See Chapter 8 for more information on CTR.

In terms of joint and several liability for council tax, the meaning of provisions can be difficult to interpret as ‘husband’, ‘wife’ and ‘married’ are not defined in previous council tax law other than by reference to gender. There is a substantial body of social security caselaw on the various criteria that must be considered and, arguably, this will be persuasive in establishing a relationship in council tax cases. Simply because two people share accommodation, a local authority should not presume that they are sharing as the equivalent of a married couple or a couple living together as spouses, resulting in joint and several liability. Examples where the council may make erroneous inferences include cases where brothers and sisters live together and situations where two people of the same sex (whether related or not) are living at, or using, the same address.

It is difficult to see how the local authority could conclude that two unmarried people are living together as spouses unless they were members of the same household (as opposed to merely being resident in the same dwelling) without details of a sexual relationship and the roles assumed in the household. Although there is no established ‘right to privacy’ in domestic law, an action<sup>71</sup> may be taken for breach of confidence or harassment where private information is released or misused, or improperly demanded. More generally, the local authority’s power to demand such information is limited in light of Article 8 of the European Convention of Human Rights, enshrining a right to privacy, and the limits placed in regulations and at law as to what information may be sought.

If the questions that you are asked by the local authority are unreasonable, you should make a formal complaint. It is a good idea to involve your Member of Parliament. Complaints may also be taken to the monitoring officer of the local authority and to the Local Government Ombudsman, and you may be able to take action through a tribunal or the civil courts in extreme cases where confidentiality is broken or improper information requested. An erroneous decision on joint and several liability may be challenged (see p92).

You cannot have joint and several liability where the facts show that you do not have sole or main residence in a dwelling with another person. A finding that you do not have sole or main residence in a dwelling will remove you from any liability for council tax altogether from the effective date you ceased to reside. In polygamous marriages, all partners resident in the dwelling are jointly liable<sup>72</sup> and specific provision is made in the regulations for CTR schemes (see Chapter 8).

## **The significance of joint liability**

The local authority has the option of addressing the council tax bill to any one or more of the jointly liable people, or all of them. In Scotland, someone who is jointly liable with the person(s) named on the bill, but whose name is not included, is still liable to make the required payments. See Chapter 9 for more details. In England and Wales, a payment cannot be required from a liable person until s/he has been billed. If the local authority wants to recover the council tax from someone who is jointly liable but not named on the original bill, a fresh bill (a joint taxpayers' notice) must be issued.<sup>73</sup> In practice, local authorities tend to pursue the first two named persons on a bill.

To be eligible for a reduction under a CTR scheme, you have to be liable for council tax. If someone other than your partner is jointly liable, any CTR is worked out on your apportioned share, even though the local authority may be seeking to recover all of the council tax due from one person. If you are in receipt of CTR, the late identification of retrospective joint liability may mean an overpayment has been made, and could raise the possibility of a late claim for a reduction from the newly identified jointly liable person. In England and Wales, if the local authority refuses to exercise its discretion to reduce a bill in a case of late billing, you should apply for a discretionary reduction in council tax under section 13A(1) of the Local Government Finance Act 2012 (see p177) and you have a right to appeal to a valuation tribunal (see Chapter 11). For more information on CTR, see Chapter 8.

## **Joint liability and severe mental impairment**

A person who is disregarded for discount purposes because of a 'severe mental impairment' (see p113) is not held jointly liable if there is someone else with the same status and legal interest in the property who is not severely mentally impaired.<sup>74</sup> However, a severely mentally impaired person is liable for the tax if:

- s/he is the only liable person; *or*
- s/he is the only owner, tenant or contractual licensee even if her/his partner is not severely mentally impaired; *or*
- all the jointly liable people are severely mentally impaired.

Dwellings in which all the occupants are severely mentally impaired are exempt (see p62).<sup>75</sup>

### **Example**

Taylor and Ella are a couple and are joint owners. Taylor is severely mentally impaired and is disregarded for discount purposes. Normally, the couple (as joint owners and residents) would be liable, but as Taylor is severely mentally impaired, Ella is liable. If she were to no longer reside in the dwelling, it would become exempt.

If someone goes into a care home, nursing home or hospital, a ruling from the Court of Protection may be required if s/he does not have the mental capacity to determine her/his place of residence.

## **Students**

A student who is disregarded for discount purposes (see p109) is not held jointly liable if there is someone else with the same status and legal interest in the property who is not a student.

## **5. Change of circumstances**

A change of circumstances may change council tax liability during the year – eg, a liable owner may sell the dwelling or a liable tenant may move to live elsewhere. Liability for council tax arises on a daily basis and the state of affairs at the end of the day is assumed to have lasted all that day.<sup>76</sup> Consequently, the liable person is liable for the first day of residence in the dwelling, but not the last.

If a liable person dies, there is no liability for any part of the day on which s/he dies. Within seven days of the registration of the death of any person aged 18 or over, the registrar of births and deaths for the district in which the person died is required to supply the billing authority with the deceased's name, usual address and the date of her/his death.<sup>77</sup>

If you fail to declare a change of circumstances, you may be subject to a penalty or prosecuted for an offence in relation to any CTR claim. It is an offence not to declare a change of circumstances which you know affects your entitlement to a reduction under a local authority reduction scheme, or if you deliberately fail to give a notice of the change as required. It is also an offence to knowingly cause or allow a person to fail to give this notification. Knowledge that entitlement is affected is a requirement of the offence in England,<sup>78</sup> while in Wales the authority must prove dishonesty.<sup>79</sup> These provisions do not apply in Scotland.<sup>80</sup>

## **6. Backdating liability**

Liability may be backdated to previous years. The relevant date is the day a person became liable (ie, had her/his sole or main residence in the dwelling), not the date

the local authority informed the taxpayer.<sup>81</sup> This may lead to the local authority serving a demand on someone up to six years after s/he may have left a dwelling. However, if a local authority delays serving a demand notice, this may make the demand invalid if it causes prejudice if it seeks to enforce the demand through the magistrates' or sheriff court. See Chapters 9 and 10 for more details.

Backdating under the council tax reduction schemes varies between local authorities in England and Wales, but you may apply for a discretionary reduction in council tax under section 13A(1)(c) of the Local Government Finance Act (see p177). You may seek a discretionary reduction regardless of when the alleged liability arose.

If you want to challenge the local authority, you can appeal (see Chapter 11). It may also be worth making a complaint for delay where a local authority suddenly seeks to impose a backdated liability for previous years, and to establish why a local authority has failed to establish liability earlier or reversed an earlier decision. The former President of the Valuation Tribunal, Professor Graham Zellick, ruled that the Limitation Act 1980 set a limit on when proceedings must be initiated but did not set a limit on the number of years in the past in respect of which sums may be recovered.<sup>82</sup>

The Ombudsman has indicated that extensive delay in making a person aware of a liability may amount to maladministration. A judicial review of the local authority may be sought.<sup>83</sup>

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## **7. How the liable person is identified**

To establish liability, the local authority has a variety of powers that require people and organisations to provide information. It is also able to use its own information obtained for other purposes. If the local authority is unable to identify a liable person by name, it may serve a bill on the 'council taxpayer'. The residents of the dwelling will then need to decide who has to pay the tax.

### **The local authority's own information**

A local authority may use information obtained under any other enactment in England and Wales, provided that it was not obtained in its role as a police authority and, in Scotland, that it is not information obtained through social work activities, unless it consists solely of names and addresses.<sup>84</sup>

### **Information from residents, owners or managing agents**

The local authority has the power to write to anyone who appears to be a resident, owner or managing agent of a particular dwelling, requesting information it requires to identify the liable person or the person who would be liable if the dwelling were not exempt.<sup>85</sup> The rules may place a burden on officials of housing



associations and those who manage accommodation for vulnerable individuals. A **'managing agent'** means any person authorised to arrange lettings of the dwelling concerned. If you receive a written enquiry, you must supply the required information within 21 days if it is in your possession or control.

## Information from other public bodies

The local authority has the power to request information from:<sup>86</sup>

- any billing authority;
- any levying authority;
- the electoral registration officer for any area in Great Britain.

In Scotland, information may also be requested from the assessor.

Information may also be obtained from HM Revenue and Customs for the authority to:<sup>87</sup>

- make a council tax reduction (CTR) scheme;
- determine entitlement or continued entitlement to CTR;
- prevent, detect or secure evidence of, or prosecute the commission of, a council tax offence;
- use in valuation tribunal proceedings.

## Penalties

A local authority in England has the discretion to impose a penalty of £70 on someone who fails to respond to a request for information needed to identify the liable person.<sup>88</sup> In Wales and Scotland, the penalty is £50. An English or Welsh authority may quash such a penalty. A Scottish authority may revoke a penalty if you have a reasonable excuse for failing to supply it.<sup>89</sup> Each time the local authority repeats the request and you fail to supply the information, another £280 penalty (£200 in Wales and Scotland) could be imposed.<sup>90</sup>

In Scotland, an additional set of penalties of up to £500 have been created to police claims related to the new variable charges which can be set against unoccupied long-term empty homes.<sup>91</sup>

Additionally, the power to impose penalties has been extended in an attempt to bring the law in line with provisions in social security benefits, even though local taxation law is essentially different from social security law. These regulations affect not only taxpayers but also persons who may be providing information on behalf of vulnerable people, including owners of houses in multiple occupation, managers of hostels and accommodation for other people and lawyers and advisers who may be acting on behalf of a taxpayer.

The penalty system is designed to operate in conjunction with the system of CTR schemes. Regulations make provision for powers to require information, the creation of offences and powers to impose penalties in connection with these CTR schemes.<sup>92</sup>

Billing authorities may authorise officers and third parties to discharge these functions for them to individuals with proper authority. These officers can act to collect information for 'detecting and securing evidence of the commission' of offences connected with an application for an award of a reduction of council tax support under a local authority scheme, including access to electronic records.<sup>93</sup>

It is a criminal offence to:

- intentionally delay or obstruct an authorised officer in the exercise of any power to require information;<sup>94</sup>
- refuse or fail (without reasonable excuse) to comply with a requirement to enter into arrangements for access to electronic records, or to fail to provide information when required to do so;<sup>95</sup>
- make a statement or representation which you know to be false for the purpose of obtaining a reduction under a CTR scheme;
- provide or knowingly cause or allow to be provided a document or information which you know to be false in a material particular.<sup>96</sup> (For the information to be material, it must actually affect the issue of whether you receive a reduction or not and not simply be any error or mistake.)

A time limit of three months from the date the authority considered evidence justifying a prosecution existed, or 12 months, is placed on bringing proceedings from the commission of the offence, whichever period last expires.<sup>97</sup>

An appeal may be made against the imposition of a penalty.<sup>98</sup>

## 8. Appeals

An appeal can be made against a decision on liability by writing to the local authority.<sup>99</sup> There is no time limit for making an appeal. To appeal, you must be an 'aggrieved person' – ie, the person considered liable to pay the tax or the owner (if different). The appeal letter should give the reasons why you believe the local authority has come to the wrong decision. The local authority has two months in which to answer.<sup>100</sup> In the initial appeal letter, it is advisable to refer to the right to take an appeal to the Valuation Tribunal for England (VTE), the Valuation Tribunal for Wales (VTW) or a valuation appeal committee in Scotland if the local authority does not accept the appeal.

If the local authority refuses to alter its decision or fails to answer within two months of receiving the appeal, a further appeal can be made.<sup>101</sup> This is done by writing to the VTE/VTW. In Scotland, a further appeal is made by writing again to the local authority. The local authority should pass the appeal to the secretary of the relevant local valuation appeal committee. If an appeal is served on the local authority, send a copy to the valuation appeal committee for it to be placed on file, in case the letter to the local authority goes astray. For more information about appeals, see Chapter 11.

The local authority may enforce payment of the original bill while the appeal is outstanding, but if recovery proceedings have been started through the magistrates' court (or sheriff court in Scotland), you should seek an adjournment of any hearing in the magistrates' court or the sheriff court, pending the outcome of an appeal.<sup>102</sup>

## Notes

### 1. Who is liable

- 1 s6(5) LGFA 1992
- 2 **EW** s6 LGFA 1992
- 3 s75 LGFA 1992
- 4 **EW** s6(2) LGFA 1992
- 5 s75(2) LGFA 1992
- 6 **EW** s2(2)(c) LGFA 1992
- 7 s71(2)(c) LGFA 1992
- 8 Within the meaning of the Rent Act 1977 or the Rent (Agriculture) Act 1976
- 9 Within the meaning of Part IV of the Housing Act 1985
- 10 Within the meaning of Chapter I of Part V of the Housing Act 1996
- 11 **EW** s6(6) LGFA 1992
- 12 **EW** s6(5) LGFA 1992 as amended by s13(1) LGFA 2012
- 13 **EW** s6(5) LGFA 1992
- 14 s65 LGFA 1988
- 15 s75(2) LGFA 1992
- 16 Within the meaning of the Rent (Scotland) Act 1984
- 17 Within the meaning of the Housing (Scotland) Act 1988
- 18 Within the meaning of Part III of the Housing (Scotland) Act 1987
- 19 s75(5) LGFA 1992
- 20 **EW** ss6-7 LGFA 1992
- 21 **EW** ss6-7 LGFA 1992
- 22 **EW** s2 LGFA 1992
- 23 s71 LGFA 1992

### 2. Who is a resident

- 22 **EW** s6(5) LGFA 1992
- 23 s99(1) LGFA 1992
- 24 *R (Williams) v Horsham DC* [2004] EWCA Civ 39
- 25 *A v South Oxfordshire DC* [2015] Appeal No.3115M81253/221C, decision of the VTE vice-president Martin Young, 11 September 2015, para 29
- 26 *Parry v Derbyshire Dales DC* [2006] RA 25
- 27 *R (on the application of Walford) v Worcestershire CC* [2014] 3 All ER 128
- 28 See Appeal No.5900M109133/084C, 30 October 2013
- 29 **EW** see *CT v Horsham DC (HB)* [2013] UKUT 617 (AAC) and *MacAttram v LB Camden* [2012] EWHC 1033
- 30 *Trustees Berwick Settlement v Shropshire Council* (3245M131738/176C) contrasting *CT v Horsham DC (HB)* [2013] UKUT 617 (AAC)
- 31 *Leeds City Council v Broadley* [2016] 4 WLR 137
- 32 *Oyston v Leeds City Council*, Appeal No.4720M6769/244C
- 33 *Branwell v Valuation Office Agency* [2015] All ER (D) 99 (Apr) per Mrs Judge Elisabeth Laing DBE
- 34 *Sumeghova v McMahon* [2002] All ER (D) 371 (Oct); [2003] RVR 8
- 35 *Newton v Kirklees Council* [2019] VTE Application No.4715M262995/282C, 7 November 2019
- 36 *Highland Council v Highland and Western Isles Region Valuation Committee* [2008] RA 311 Sc20; *Dundee Council v Dundee Valuation Assessment Committee and Fleming Hansen* [2011] CSIH 73

- 36 See Appeal No.0738M144734/254C, 24 March 2015
- 37 See Appeal No.0738M144734/254C, 24 March 2015
- 38 *Khan v Burnley BC*, Appeal No.2315M198655/254C/S
- 39 s11A(4A) LGFA
- 40 *Khan v Burnley BC*, Appeal No.2315M198655/254C/S, para 17
- 41 *Frost v Feltham* [1981] STC 115
- 42 *Byrne v Rowbotham* (1969) 210 Estates Gazette, p823
- 43 Appeal No.0405M119713/037C, 20 May 2014

### 3. When the owner is always liable

- 44 **EW** s8(1) LGFA 1992  
s76(1) LGFA 1992
- 45 *Soor and another v Mayor & Burgesses of the London Borough of Redbridge* [2013] EWHC 1239 (Admin)
- 46 **E** CT(LO)(A)(E) Regs  
**W** CT(LO)(A)(W) Regs
- 47 **EW** England by SI 2003/3125, reg 2 amended by SI 2012/1915, art 3 and in relation to Wales by SI 2004/2920, reg 2 amended by SI 2018/48, reg 2, Sch 1 para 5
- 48 Para 1 Sch 1 para 1 CT(LO)(S) Regs
- 49 **EW** CT(LO) Regs  
s CT(LO)(S) Regs
- 50 *Watts v Preston City Council* [2009] EWHC (Admin) 2179, para 23
- 51 **EW** CT(LO) Regs
- 52 s128 Housing (Scotland) Act 2006
- 53 *Shah v Croydon LBC* [2013] EWHC 3657
- 54 *Shah v Croydon LBC* [2013] EWHC 3657, para 43
- 55 *Baker (LO) v Gomperts* [2006] All ER (D) 01 (Jul)
- 56 *Norris and Norris v Birmingham City Council* [2001] RVR 89
- 57 *R (on the application of Goremsandu) v Harrow LBC* [2010] EWHC 1873 (Admin)
- 58 *Watts v Preston City Council* [2009] EWHC 2179 (Admin)
- 59 *Walsh v Lonsdale* [1882] 21 ChD 9; *Soor v Mayor Burgesses of the LB of Redbridge* [2013] EWHC 1239 (Admin)
- 60 *The UHU Property Trust v Lincoln City Council* [2000] unreported, per Sullivan, J cited in *Shah v Croydon London Borough Council* [2013] EWHC 3657, para 22
- 61 *Naz v LB Redbridge* [2013] EWHC 1268 (Admin); [2013] All ER (D) 13
- 62 *Shaughnessy v LB Hackney* [2013] VTE 13 and 20 January 2012 Appeal no.5360M70010/052C/1

- 63 *Dundee City Council v Dundee Valuation Appeal Committee and another* [2011] CSIH 73
- 64 **EW** CT(LO) Regs  
s CT(LO)(S) Regs
- 65 **EW** CT(LO) Regs  
s CT(LO)(S) Regs
- 66 **EW** CT(LO) Regs  
s CT(LO)(S) Regs
- 67 s CT(LO)(S) Regs
- 68 *R v Hackney LBC ex parte Adebiri and other appeals* [1997] *The Times*, 4 November 1997  
**EW** Reg 2 CT(LO) Regs  
s CT(LO)(S) Regs

### 4. Joint liability

- 69 **EW** s6(3)-(4) LGFA 1992, as amended by s74 LGA 2003  
s75(3)-(4) LGFA 1992
- 70 **EW** s9 LGFA 1992  
s77 LGFA 1992
- 71 *Wainwright v The Home Office* [2003] UKHL 53; European Court of Human Rights [2006] Application No.12350/04, 26 September 2006
- 72 Practice Note No.2, para 20
- 73 **EW** Reg 28 CT(AE) Regs 1992
- 74 **EW** ss6(4) and 9(2) LGFA 1992  
s ss75(4) and 77(2) LGFA 1992
- 75 **EW** CT(ED)O

### 5. Change of circumstances

- 76 **EW** s2 LGFA 1992  
s71 LGFA 1992
- 77 **EW** Reg 5 (1)CT (AE) Regs 1992
- 78 **E** Reg 8(1)(c) CTRS(DFE)(E) Regs  
*Shaughnessy v LB Hackney* [2013], Appeal No.5360M70010/052C/1, 13 and 20 January 2012
- 79 Reg 10 CTRS(DFE)(W) Regs
- 80 s119(3) LGFA 2012

### 6. Backdating liability

- 81 *Hammersmith and Fulham Billing Authority v Butler* [2001] RVR 197
- 82 *Holdsworth v Bradford City Council* [2015] RA 215 VTE Appeal No.4705M141113/254C, 22 June 2015
- 83 *R v Lambeth LBC ex parte Ahijah-Sterling* [1986] RVR 27

### 7. How the liable person is identified

- 84 **EW** Reg 6 CT(AE) Regs 1992  
s Reg 5 CT(AE)(S) Regs
- 85 **EW** Regs 3 and 12 CT(AE) Regs 1992  
s Reg 2 CT(AE)(S) Regs



- 86 **EW** Reg 3 CT(AE) Regs 1992  
**S** Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 No.338
- 87 Sch 2 para 15A(1)-(4) LGFA 1992
- 88 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992
- 89 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992
- 90 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992
- 91 Sch 3 para 2(1A) LGFA 1992; s3(1)(5)(a) Local Government Finance (Unoccupied Properties etc) (Scotland) Act 2012
- 92 ss14A-14C LGFA 1992 inserted by s14 LGFA 2012
- 93 **E** Regs 4 and 5 CTRS(DFE)(E) Regs  
**W** Reg 5 CTRS(DFE)(W) Regs
- 94 **E** Reg 6 CTRS(DFE)(E) Regs  
**W** Reg 6 CTRS(DFE)(W) Regs
- 95 **E** Regs 4, 5 and 6 CTRS(DFE)(E) Regs  
**W** Reg 6(1)(b) CTRS(DFE)(W) Regs
- 96 **E** Reg 7 CTRS(DFE)(E) Regs  
**W** Reg 9(1) CTRS(DFE)(W) Regs
- 97 **E** Reg 10 CTRS(DFE)(E) Regs  
**W** Reg 12 CTRS(DFE)(W) Regs
- 98 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992

## 8. Appeals

- 99 **EW** s16 LGFA 1992  
**S** s81 LGFA 1992
- 100 **EW** s16 LGFA 1992  
**S** s81 LGFA 1992
- 101 **EW** s16 LGFA 1992  
**S** s81 LGFA 1992
- 102 *R v Ealing Justices ex parte Coatsworth* [1980] 126, *Solicitors Journal* 128

# Chapter 6

## Disability reductions

**This chapter covers:**

1. What is a disability reduction (below)
2. When a disability reduction can be made (p97)
3. Getting a disability reduction (p100)
4. How the reduction is made (p100)
5. Change of circumstances (p103)
6. Appeals (p103)

### 1. What is a disability reduction

Disability reduction schemes apply in England and Wales,<sup>1</sup> and in Scotland.<sup>2</sup> The basic amount of the council tax and, in Scotland, Scottish Water charges,<sup>3</sup> may be reduced if:

- a disabled person lives in the dwelling; *and*
- the dwelling has certain features that are essential, or of major importance, to the disabled person because of her/his disability; *or*
- the disabled person uses a wheelchair in the home.

A disability reduction reduces your council tax bill to the amount payable for a home in the valuation band below yours (or by one sixth if you are in Band A). The reduction can be made on residential care or nursing homes as well as on any other dwelling.

In addition to the disability reduction scheme, the value of fixtures (such as a lift or specially designed kitchen units) designed to make the dwelling suitable for use by a physically impaired person should have been ignored in the valuation of the dwelling if they added to its value (see p31). If fixtures designed to make the dwelling suitable for use by a physically impaired person reduce the value of the dwelling, they should have been taken into account in the valuation process and will, therefore, be reflected in the dwelling's banding.<sup>4</sup>

It is important not to overlook the effect of any entitlement to a reduction in banding in any calculation or claim for a council tax reduction (see Chapter 8) or in any issue of disputes over monies owed in enforcement (see Chapter 10).

Because it is possible to backdate an award of a disability reduction for up to six years or more (see p101), the amount by which your debt can be reduced can be substantial.

## 2. When a disability reduction can be made

### The disabled person

For a reduction to be awarded, the dwelling must be the 'sole or main residence' (see p77) of at least one disabled person. No additional reduction is made if more than one disabled person lives in the dwelling.

To count as disabled for the purpose of the reduction, a person must be 'substantially and permanently disabled', whether by congenital disorder from birth, illness, injury, or otherwise. There is no general test of 'substantially and permanently disabled'. This means that someone with a learning disability, impairment or a mental health problem may qualify, as well as someone with a physical impairment. The disabled person may be an adult or a child. S/he need not be the person liable to pay council tax on the dwelling.

Social services departments in England and Wales and social work departments in Scotland have a discretion to maintain a register of, and provide various services to, people in their area who are substantially and permanently disabled. They have considerably more skills and experience in making assessments of disability than their counterparts in council tax administration. If you are on the disabled person's register, this should be sufficient to satisfy the criterion of 'substantially and permanently disabled' for the purposes of a disability reduction. However, if you are not included on the register, this does not necessarily mean you are not 'substantially and permanently disabled', as registers are not comprehensive and registering as disabled is not compulsory.

### The dwelling

The dwelling must have at least one of the following features:

- a room, but not a sole bathroom, a kitchen or a lavatory, which is predominantly used by the disabled person – eg, a room used for dialysis equipment; *or*
- an additional bathroom or kitchen within the dwelling which is necessary to meet the needs of the disabled person; *or*
- sufficient floor space to permit the use of a wheelchair.

To qualify, the feature must be essential, or of major importance, to the disabled person's wellbeing because of the nature of her/his impairment.<sup>5</sup> The High Court has ruled that there must be an appropriate causative link between the impairment in question and the need to use the room.

Among the factors a local authority should consider when deciding if these conditions apply, is whether if the room or feature were not available:

- the disabled person would find it physically impossible or extremely difficult to live in the dwelling; *or*
- her/his health would suffer or her/his disability would worsen.

A sole bathroom or kitchen, even if specially adapted, is not sufficient to qualify because everyone needs a bathroom or kitchen.<sup>6</sup> Similarly, simply having equipment in a room used for other purposes or merely for storing equipment used by the disabled person (eg, a heater) will not fulfil the requirement of the room being additional.<sup>7</sup> In an appeal in 2015,<sup>8</sup> the appellant had lived in a one-bedroom flat and had to use a kidney dialysis machine for several hours every day. Because of limited space, the dialysis machine had to be kept in the living room, which was used every day and night, along with chairs, sofa and a television. The application for a disability banding reduction failed because the room itself was not specifically required or set aside for meeting the needs of a disabled person. Consequently, it did not fulfil the conditions for a disability reduction set out in the regulations. However, if a local authority, or valuation tribunal, concludes that, without the room containing the equipment needed by the disabled person, it would be extremely difficult, if not impossible, for the person to live an independent life in the dwelling, then a reduction may be awarded.<sup>9</sup> For example, the Valuation Tribunal for England ruled a room used for storing a nebuliser, an oxygen concentrator and other breathing apparatus needed by a disabled resident fulfilled the requirement of 'a room which is not a bathroom, a kitchen or a lavatory and which is predominantly used (whether for providing therapy or otherwise) by and is required for meeting the needs of any qualifying individual resident in the dwelling'.<sup>10</sup> The tribunal rejected the billing authority's view that, as the room used to store the equipment was the appellant's spare bedroom, it did not alter its potential use as a bedroom, because it was impractical for the appellant to have the oxygen concentrator in the same bedroom as she slept because of its size and the noise it made when operating. There was a causative link because the room was essential or of major importance to her well-being because, without it, she would be unable to sleep properly or reside in the dwelling.<sup>11</sup>

The creation of an extra bedroom to meet the needs of a disabled person may also attract a reduction. In a 2015 appeal,<sup>12</sup> the council built a bedroom in a ground floor extension in addition to the previous bedroom used by the appellant which existed upstairs. The valuation tribunal rejected the argument that the appellant needed a bedroom whether disabled or not. The additional bedroom was created specifically because the nature and extent of the appellant's impairment necessitated a duplicate provision on the ground floor. As a result, the appellant was entitled to a reduction and it did not matter that his wife sometimes shared the bedroom with him.



Similarly, in a case where a couple occupied a two-bedroomed flat instead of a single-bedroomed property (exceeding what would ordinarily have been needed) as a consequence of the appellant's medical condition, which necessitated him sleeping separately, a reduction was granted. A causative link was established as the requirement for a separate bedroom was necessary for his condition.<sup>13</sup>

A reduction for sufficient floor space may be available if disabled person uses a non-standard wheelchair or even a wheeled frame.<sup>14</sup>

When applying for a reduction, and if an appeal to the valuation tribunal becomes necessary, it is important to emphasise this point using evidence such as witness statements from carers, medical reports and evidence about any adaptations or alterations in the room to be considered.

## Major importance

The use of the room has to be of major importance to the disabled person, and a question to ask is whether the room would be being used in a particular way if the disabled person was not present.

Two High Court rulings concerning three appeals during 2006 clarified the law on rooms attracting a reduction and the meaning of 'major importance'. These were *South Gloucestershire Council v Titley and another [Clothier]*<sup>15</sup> and *Hanson v Middlesbrough Council*.<sup>16</sup>

In the case of *Titley*, the taxpayer was a profoundly deaf man living alone in a two-bedroom house. His living room was fitted with a hearing loop box enabling him to hear the television and to communicate with visitors. In the case of *Clothier*, there were two bedrooms occupied by two adults with Down's syndrome who were being looked after by their parents. Both bedrooms were used for therapy and periods of relaxation, which enabled the adult children to cope with their condition. The High Court ruled that a disability reduction should not be awarded in either case. The Court held that it was necessary to consider whether a room was specifically required for meeting the needs of a disabled person.

The Court stressed that having a disabled resident in a property was not enough. To attract the reduction, the dwelling must have a room that would not be required if the disabled person were not present.

In both these cases, the rooms were not considered additional, since they would be essential or of major importance to almost any household. In the case of *Titley*, the taxpayer would have been using the living room if he were not deaf. Similarly, in *Clothier*, the rooms were not additional; the two adult children would still have required a bedroom if they did not have Down's syndrome.

However, in the *Hanson* case, the appellant succeeded. She was a disabled woman, registered as partially sighted. She had a bedroom converted into an en-suite bathroom in 1996, a few months after she moved into the property, and 19 months before she was registered as blind. In 2004, she became aware of the right to a disability reduction for council tax but was refused. This decision was upheld

by a valuation tribunal, which rejected her appeal on the basis that the bathroom was not essential to her needs.

The High Court, however, upheld her appeal, concluding that the adaptation was of *major importance* to her because of her specific impairment as it reduced the risk of tripping or slipping.

#### Social needs of the disabled person

A room that fulfils the social needs of a disabled person may also qualify for a disability reduction. A valuation tribunal vice president addressed this in a 2014 decision.<sup>17</sup> The room concerned contained specialist electronic and computerised equipment for the appellant's use. It was installed to assist and allow the appellant to pursue leisure interests, work as a volunteer for the RNIB, continue with social science research and enjoy many of the pastimes that a sighted person would take for granted.

The vice president rejected arguments that the room should be regarded as a 'home office', and that all of the equipment was portable and could be moved to another room. The room was of major importance to the appellant's wellbeing and quality of life. The vice president ruled that the room provided something extra that was required for meeting the needs of a disabled person. The equipment it housed was sensitive and expensive and it would be impractical for it to be moved.<sup>18</sup>

Taken together, the cases show that, to obtain a disability reduction, the room used or adapted for a disabled person must be:

- extra or additional to what a person would ordinarily need, whether disabled or not;
- essential or of major importance to the welfare of the disabled person; *and*
- relevant to their physical, mental and social needs.

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## 3. Getting a disability reduction

### Who can get a reduction

The person liable to pay council tax on the dwelling is entitled to the disability reduction. S/he may be solely liable or jointly liable. If there is joint liability, an application made by one of the liable people is treated as having been made on behalf of both of them. None of the liable people need to be disabled.

The local authority may also award a disability reduction to someone who will become liable for council tax on the dwelling – eg, following work on it to meet the needs of a disabled person.

### Applications

The local authority cannot award a reduction without a written application for each financial year (April to March) from the liable person or someone acting on

her/his behalf. If you are applying on behalf of someone, the local authority normally requires written authorisation or a copy of a power of attorney. There is no prescribed form, but most local authorities have a standard application form.

## Backdating and repeat applications

The fact that a written application must be made for each financial year does not prevent you from making an application for previous years – ie, backdated to when the qualifying conditions were met. The year(s) in question should be identified on the application. Following the decisions in *Arca v Carlisle City Council*<sup>19</sup> and *HS v Leicester City Council*,<sup>20</sup> a disability reduction can be backdated for up to six years from the date of making an application but it is currently unclear as to whether it may be extended further as can be done with discounts. In the *Arca* case, the tribunal ruled that a taxpayer who applied for a reduction on 3 November 2011 was entitled to a disability reduction dating back to 2 November 2005, six years before the written application was made. The President of the Valuation Tribunal for England (VTE), Professor Graham Zellick QC, held that an application was permissible as a proceeding within the Limitation Act 1980 which places a six-year time limit upon civil law claims reaching the tribunal. While this is a decision of the VTE and not of the High Court, Professor Zellick stated that ‘until the matter is settled by a higher court...billing authorities would be well advised not only to regard this decision as representing a correct statement of the law but also as the interpretation almost certainly to be applied by this tribunal in any future appeal raising the same issue unless fresh arguments can be made.’<sup>21</sup> However, in the case of discounts, in *HS v Leicester City Council*,<sup>22</sup> it was held that reductions by way of discount could be backdated more than six years, which conflicts with the position in *Arca*. In a future case, it seems possible that a tribunal or higher court might reach a different decision if the ruling in *HS v Leicester City Council* is also considered.

Also, the Limitation Act restriction may not apply if there is a reason why evidence has not been available before as a result of fraud, concealment or mistake.<sup>23</sup> For example, if a disabled person was previously given wrong advice by the local authority, the Limitation Act 1980 may not apply. In Scotland, the limitation period is 20 years.<sup>24</sup>

Once a written application has been made, a repeat application is required each financial year. Local authorities should ideally send a repeat application form and a reminder at the appropriate time each year, but they are not required to do so. Local authorities should not generally require a full application in a second or subsequent year; it will often be sufficient to seek the liable person’s confirmation that the circumstances have not changed.

#### Information required by the local authority

The local authority may require a supporting letter from a doctor, occupational therapist or social worker, confirming that the disabled person needs the particular qualifying feature of the dwelling because of her/his disability. There is no statutory requirement to seek such letters, however, and local authorities should consider on a case by case basis whether verification is necessary. Some local authorities also send an officer to visit the dwelling and interview residents or carers.

When considering whether or not the reduction applies, an English or Welsh local authority may make a written request for information it reasonably requires at any time and to anyone.<sup>25</sup> It may also require you to respond within a specified period, but must give you at least 21 days to answer.

#### 4. How the reduction is made

If a disability reduction is awarded, the liable person's council tax bill is reduced to that of a dwelling in the valuation band immediately below the band to which the dwelling has been allocated on the valuation list.

The reduction applies for each day that the qualifying conditions are met.

The amount payable on a dwelling that qualifies for a disability reduction in Band A is reduced by the same proportion of the bill as dwellings in valuation Bands B, C and D, being equivalent to five-ninths of Band D.<sup>26</sup>

##### *Example*

Raheem's dwelling is in Band C on the valuation list. Following the award of a disability reduction, the bill that must be paid is the same as that of a Band B dwelling.

The disability reduction does not alter the actual valuation of the dwelling or its banding on the valuation list. Raheem's bill should show both the dwelling's actual band and the reduction.

#### The effect of the reduction on other forms of help

If you are entitled to a disability reduction, you may also be entitled to a discount or council tax reduction (CTR). These other forms of help are calculated on the basis of the council tax liability after the disability reduction has been made. Consequently, the retrospective award of a disability reduction may mean that there has been an overpayment of CTR or the former council tax benefit – seek advice if this applies to you.



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## 5. Change of circumstances

If there is a change in circumstances (eg, if the disabled person moves to alternative accommodation), the liable person may no longer be entitled to a disability reduction. If the liable person believes that s/he has ceased to be eligible for the reduction, s/he must notify the local authority. This obligation extends to all those who are jointly liable for the tax on the dwelling in question.

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## 6. Appeals

If the local authority refuses to award a disability reduction, an appeal can be made in writing to the local authority.<sup>27</sup> An appeal can be made if you are liable to pay the tax or if you are the owner of the property (if different). The appeal letter should give the reasons why you believe the local authority has come to the wrong decision. The local authority has two months in which to answer.<sup>28</sup> If no reduction is awarded, or if the local authority fails to answer within two months:

- in **England and Wales**, a further appeal can be made by writing to the Valuation Tribunal for England or the Valuation Tribunal of Wales. The appeal should normally be made within two months of the date the local authority notified you of its decision, or within four months of the date when the initial representation was made, if the local authority has not responded. An out-of-time appeal may be allowed if you have failed to meet the appropriate time limits for reasons beyond your control;<sup>29</sup>
- in **Scotland**, a further appeal can be made by writing again to the local authority. The local authority should pass the appeal to the secretary of the relevant local valuation appeal committee. The appeal must be made within four months of the date on which the grievance was first raised with the local authority in writing. There is no power to consider an out-of-time appeal, so you must make a fresh appeal to the local authority to begin the process again. However, if you fail to appear at a hearing, so that the appeal is dismissed, you can make representations to allow another appeal hearing. You have 14 days from being notified of the dismissal to apply in writing to request another hearing, and the appeal committee has a discretion to allow a longer period. If the appeal committee is satisfied that there was a reasonable excuse for your absence, it can recall the decision and fix a date for a further hearing.<sup>30</sup>

See Chapter 11 for further information about appeals.

The local authority may enforce payment of the original bill while the appeal is outstanding, but it may agree to a suspension until the matter is resolved. Alternatively, the magistrates' court (sheriff court in Scotland) may agree to an adjournment of any proceedings which may be issued if an agreement to suspend recovery is not reached and an appeal against the decision had been lodged.<sup>31</sup>

## Notes

### 1. What is a disability reduction

- 1 **EW** s13 LGFA 1992; CT(RD) Regs and CT(RDTA)(W)(A) Regs
- 2 **S** s80(1)-(4) and (6)-(7) LGFA 1992; CT(RD)(S) Regs
- 3 **S** CT(RD)(S) Regs
- 4 **EW** Reg 6 CT(SVD) Regs  
**S** Reg 2 CT(VD)(S) Regs

### 2. When a disability reduction can be made

- 5 *Sandwell MBC v Perks* [2003] RVR 317 Admin 1749 (HC)
- 6 **EW** Reg 6 CT(SVD) Regs  
**S** Reg 2 CT(VD)(S) Regs
- 7 *Howell Williams v Wirral MBC* [1981] RA 189 CA
- 8 Appeal No.3810M143554/084C, 2 April 2015
- 9 Appeal No.2235M10253/084C, 13 September 2013
- 10 *Bector v Wolverhampton City Council*, 2 October 2019
- 11 Appeal No.4635M259959/283C, 17 October 2019
- 12 Appeal No.5480M138614/084C, 4 March 2015
- 13 Appeal No.2820M165193/037C, 26 February 2016
- 14 Appeal No.5060M73251/053C, 23 November 2011, para 25
- 15 *South Gloucestershire Council v Titley and another* [2006] EWHC 3117 (Admin)
- 16 *Hanson v Middlesbrough Council* [2006] RA 320 (HC)
- 17 Appeal No.2710M130673/254C, 18 September 2014
- 18 Appeal No.2710M130673/254C, 18 September 2014

### 3. Getting a disability reduction

- 19 *Arca v Carlisle City Council* [2013] RA 248
- 20 *HS v Leicester City Council* [2015] Appeal No.2465M142876/037C, 11 August 2015
- 21 *Arca v Carlisle City Council* [2013] RA 248; VTE 29 January and 20 March 2013, per President Professor Graham Zellick

- 22 *HS v Leicester City Council* [2015] Appeal No.2465M142876/037C, 11 August 2015
- 23 s32 Limitation Act 1980
- 24 s7 Prescription and Limitation (Scotland) Act 1973
- 25 Reg 5 CT(RD) Regs

### 4. How the reduction is made

- 26 Reg 3A(b) CT(RD) Regs

### 6. Appeals

- 27 **EW** s16 LGFA 1992  
**S** s81 LGFA 1992
- 28 **EW** s16 LGFA 1992  
**S** s81 LGFA 1992
- 29 **E** Reg 21(6) VTE(CTRA)(P) Regs  
**W** Reg 29(5)VTW Regs
- 30 Reg 31 CT(ALA)(S) Regs; reg 15 Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 No.572(S.41)
- 31 *Wiltshire Council v Piggin* [2014] CO 40116 High Court

## Chapter 7

# Discounts and premiums

**This chapter covers:**

1. 25 per cent discount for one resident (below)
2. Who counts for discount purposes (p106)
3. Who is disregarded for discount purposes (p106)
4. Getting a discount (p117)
5. Unoccupied dwellings discounts (p119)
6. Miscellaneous discounts (p122)
7. Premiums on long-term empty and second homes (p122)
8. Appeals (p126)

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### 1. 25 per cent discount for one resident

The council tax (and Scottish Water charges in Scotland) payable on a dwelling is initially based on the assumption that there are at least two adults living in it. The bill does not increase if there are more than two, but should be reduced by 25 per cent if there is only one person solely or mainly resident in the dwelling. See p77 for what counts as 'sole or main residence'.

Certain people, however, are ignored or disregarded by local authorities when deciding how many people are solely or mainly resident in the dwelling (see p106). Effectively, they are not counted as living in the dwelling for council tax purposes when calculating the bill.

For the purpose of deciding whether the council tax is subject to a discount for any day, the state of affairs at the end of the day is assumed to have existed throughout that day.<sup>1</sup> Details of the discount are listed on the annual council tax bill. If the number or type of residents in a dwelling alters during the year, the amount of discount is recalculated and adjusted for the number of days and period of time concerned.

Where a notice issued by a Scottish local authority demands the payment of council tax and also water charges and/or sewerage charges on one bill, certain gross amounts may no longer appear separately on the adjusted bill.<sup>2</sup>

## Discounts and other forms of help

You can be granted a discount in addition to any disability reduction, transitional relief on a bill for an earlier year or council tax reduction (CTR). Local authorities are under a duty to make enquiries as to the discounts. The discount is applied after granting a disability reduction, but before calculating main CTR. Alternative CTR (known as 'second adult rebate') is worked out on the basis of the council tax liability, ignoring any discount that has been granted. This rebate is intended to compensate you if extra adults living with you cannot afford to meet the cost of losing this discount. See Chapter 8 for more details on CTR schemes.

## 2. Who counts for discount purposes

Billing by local authorities presumes there are two adult residents both aged over 18 occupying each dwelling. Only adults solely or mainly resident in the dwelling count for the purpose of working out whether or not a discount applies. People under 18 and those solely or mainly resident elsewhere are ignored.<sup>3</sup>

### Example

Isla lives with her 15-year-old daughter. A 25 per cent discount is granted as there is only one person over 18 residing in the dwelling.

Isla's friend Anna comes to stay but keeps a home elsewhere. If it is decided that Anna is mainly resident elsewhere, the discount should continue. If it is decided that Anna is now mainly resident in Isla's home, the discount no longer applies from the day she moved in.

## 3. Who is disregarded for discount purposes

In addition to those who are ignored for the purposes of a discount (see above), certain categories of people are disregarded.<sup>4</sup> They are sometimes described as 'having a status discount', or more simply as 'invisible'. They are listed below.

If you are disregarded for the purpose of a discount, it does not necessarily mean that the tax bill is reduced. A discount is only awarded if there are fewer than two adults in the dwelling, not counting those who are disregarded. A liable person may be disregarded for the purpose of a discount, but is still liable for the council tax. The exceptions to this last rule concern liable people who are either considered to be severely mentally impaired or students. See Chapter 5 for more details.

The discount applied is:<sup>5</sup>

- 25 per cent if there is one resident in the property who is not a disregarded person;



- 50 per cent if all the residents in the property are disregarded;
- if all the residents in the property are students, see p109, or 'relevant persons' the property would be 'exempt' and no council tax would be payable, see p59;
- if all the residents in the property are 'severely mentally impaired' (see p113), the property would be 'exempt' and no council tax would be payable, see (p62).

### ***People disregarded for discount purposes***

Young people – ie:

- people aged 18 for whom child benefit is payable (see p108);
- education leavers who are under 20 (see p108);
- care leavers aged 18-25 in Scotland and Wales (see p108);
- youth trainees (see p108);
- students under the age of 20 studying up to A level, Scottish Advanced Higher or equivalent (see p109).

Full-time students in higher education (see p110).

Foreign language assistants who are classed as students (see p112).

A person who has diplomatic, Commonwealth or consular privilege or immunity.

Spouses or dependants of foreign students (see p112).

Student nurses (see p112).

Apprentices (see p112).

People in prison and other forms of detention (see p116).

People who are severely mentally impaired (see p113).

Certain carers (see p114).

Hospital patients (see p115).

People in care homes, private hospitals and hostels (see p115).

Members of international headquarters and defence organisations and their dependants (see p117).

Members of visiting forces (see p117).

Members of religious communities (see p116).

In England and Wales, residents in certain hostels and night shelters and other accommodation for those with no fixed abode (see p116).

### ***Examples***

Phoebe and Rachel are joint owner-occupiers. Phoebe is a full-time student and disregarded for the purpose of a discount. Rachel is in full-time work and is not disregarded. As there are only two residents and Phoebe is disregarded, a 25 per cent discount should be granted. Although they are both joint resident owners, only Rachel is liable for the reduced amount of council tax.

Mark and Louisa are joint owner-occupiers. Their daughter, Daisy, lives with them. She is aged 20 and a full-time student. Their son, Max, aged 17, also lives with them. He is in full-time work. Daisy, as a full-time student, is disregarded for discount purposes and Max, as

someone under 18, is ignored. Nevertheless, no discount is awarded because two adults (the joint owner-occupiers) live in the house and are not ignored or discounted.

Ruby and Fehed are liable joint tenants. No one else lives with them. Fehed has Alzheimer's disease and receives the daily living component of personal independence payment (PIP). He is considered to be severely mentally impaired. In these circumstances, a 25 per cent status discount is awarded because there are only two people solely or mainly resident in the dwelling and one of them is disregarded for discount purposes. In this instance, only Ruby is liable for council tax.

Jake, a carer, comes to live with Ruby and Fehed who provide him with free accommodation plus £50 a week. In these circumstances, Ruby and Fehed lose their discount as there are now two adults living in the dwelling who are not disregarded for discount purposes. If Jake is paid £44 a week or less (see p114 and p115), however, the discount would continue, as there would still be only one adult living in the dwelling who was not disregarded.

## Young people disregarded for discount purposes

If you fall into one of the following groups a disregard applies to you.

- **18- and 19-year-olds<sup>6</sup> for whom child benefit is payable** (or would be if you were not in local authority care).<sup>7</sup> The conditions of entitlement to child benefit are described in CPAG's *Welfare Benefits and Tax Credits Handbook*.
- **Education leavers under 20.** If you are under the age of 20, and have left school or college on or after 1 May in any year after undertaking a qualifying course of education (ie, one no higher than A level, Scottish Advanced Higher or equivalent) or additionally, in England and Wales, full-time education, you should be disregarded for the purpose of working out a discount between 1 May and 31 October in the same year.<sup>8</sup> You continue to be disregarded if you go on to some other form of further or higher education.
- **Youth trainees** who are under 25 and have an approved individual training plan.<sup>9</sup> You are regarded as undertaking training from the day on which the course or programme begins to the day you complete, abandon or are dismissed from it.
- **Apprentices** (see p112).
- **Young people leaving care in Scotland.** You can get a discount if you:<sup>10</sup>
  - are at least 18 but under 26; *and*
  - were looked after by a local authority<sup>11</sup> on or after your 16th birthday; *and*
  - are no longer looked after by a local authority.
- **Young people leaving care in Wales.** You can get a discount if you:<sup>12</sup>
  - are over 18 but under 25; *and*
  - are a category 3 young person as defined by section 104 of the Social Services and Well-being (Wales) Act 2014; *and*
  - are no longer looked after by a local authority.

- **Under 20 in non-advanced education.** You are regarded as a 'student' if your course is for more than 12 hours a week (see below).
- **Under 20 in higher education.** The rules are the same as for those aged 20 or over (see p110).

**Note:** if you are under 18 years old you are ignored for council tax purposes (see p106).

## Students disregarded for discount purposes

Dwellings wholly occupied by students are exempt from council tax (see p60). However, if you are living with a non-student over 18, you are disregarded for discount purposes if you are a student.<sup>13</sup> You are a student for these purposes if you study for 21 hours or more a week (see p110), are under 20 and in non-advanced education (see below), or you are a foreign language assistant (see p112).<sup>14</sup>

If you are aged under 20, whether you count as a student for council tax purposes can depend on whether you are on an advanced or non-advanced course. For older students, one rule applies whatever the level of your course.

### Under 20 in non-advanced education

You are regarded as a 'student' for council tax purposes if you are aged under 20 and on a non-advanced course of more than 12 hours a week.<sup>15</sup>

#### *Non-advanced course*

A '**non-advanced course**' is one below the level of a foundation degree, honours degree, HNC, HND or NVQ/SVQ level 4. It includes A levels, Scottish Advanced Highers, national diplomas and national certificates. The course must last more than three months. It does not include evening classes, correspondence courses, or courses taken as a result of your office or occupation.<sup>16</sup>

The hours that count are those required by the course rather than those you actually do, if they are different. To work out your hours, average out over term times the hours required under the course for tuition, supervised study, exams, and supervised exercises, experiments, projects and practical work.

You are treated as a student on each day from the day you start the course until the day you complete it, abandon it or are dismissed from it.<sup>17</sup> So you count as a student during term times, during short vacations at Christmas and Easter, and during the summer if your course continues after the summer. If your course ends in the summer and you begin a different one in the autumn, you do not count as a student in the summer between courses. However, you might be able to get a discount. In Scotland, you are treated as a student if you have completed a HNC

or HND and have received an offer of a place entering on the second or third year respectively of a full-time first degree course. That first degree course must start within six months of the completed course.<sup>18</sup>

#### **Example**

Rhys is 18 and taking three A levels at college. Including his classes, exams and supervised study, his course hours are 18 a week. He is a student for council tax purposes.

### **Under 20 in higher education**

The rules are the same as for those aged 20 or over (see below).

### **20 or over in non-advanced or higher education**

You are regarded as a 'student' for council tax purposes if the course requires you to undertake periods of study, tuition or work experience for at least 21 hours a week in at least 24 weeks each academic year.<sup>19</sup>

If you are on a sandwich course, required periods of work experience are included.

To count as a student, you must be enrolled on a course with an educational institution. From 31 December 2020, the institution must be in a 'relevant territory' defined as England, Wales, Scotland or Northern Ireland or a European Economic Area member state. You are a student from the day you begin the course until the day you complete it, abandon it or are no longer permitted by the educational institution to undertake it.<sup>20</sup> So if you take time out and are not enrolled on the course during that period, you do not count as a student for council tax purposes and you may become liable for council tax. If this is the case, check whether you are eligible for council tax reduction (CTR – see Chapter 8).

If you take time out but are still enrolled on the course, you continue to count as a student, provided you have not abandoned it completely and the institution has not said you can no longer undertake the course. Because the law says you are not a student if you are 'no longer permitted by the institution to undertake [the course]', it suggests that your dismissal from the course must be final. So you could argue that if you are temporarily suspended from the course but still registered, you still count as a student. In an informal letter, written in 1996, the former Department of the Environment (then responsible for council tax) stated:<sup>21</sup> 'In our view a period of intercalation will remain within the period of a course... and therefore, provided that the person remains enrolled at the education establishment, they will continue to fall within the definition of a full-time student'.

**Note:** a valuation tribunal decision<sup>22</sup> indicates that students who are repeating a full-time course on a part-time basis may not be regarded as meeting the definition of 'full-time student' even if their normal attendance is on a full-time



basis. Ensuring the institution is clear about the normal expectations of the course in any documentation is therefore of particular importance.

Your college or university determines the number of hours of your course. You may need evidence from it to prove to the local authority that you count as a student. Colleges and universities are required to provide you with a certificate if you ask for one while you are a student or for up to a year after you leave the course.<sup>23</sup> After that, they may still give you a certificate, but are not legally required to do so. There is no prescribed format for such certificates in the legislation, only the content, and that any information provided could be verified by contacting the college directly. The certificate must contain:<sup>24</sup>

- the name and address of the institution;
- your full name;
- your term-time address and home address (if known by the institution);
- a statement that you are (or were) a student – ie, that you are enrolled on a course requiring you to undertake periods of study, tuition or work experience of at least 21 hours a week over at least 24 weeks a year; *and*
- the date you became a student and the date your course ends.

## Postgraduate students

Full-time postgraduate students are regarded as ‘students’ for council tax purposes in the same way as other full-time higher education students.

In the past, some postgraduate research students had difficulty securing council tax exemption because local authorities considered that their periods of ‘study, tuition or work experience’ did not meet the requirements of the regulations and that, in particular, research did not count as ‘study’. This has been successfully challenged in an appeal<sup>25</sup> and in a High Court case.<sup>26</sup> The council tax regulations were amended in 2011 so that the requirement is to ‘undertake’ the course for the prescribed periods as opposed to ‘attend’ it, as was previously required. This should make it easier for postgraduate students to show they meet the requirements for exemption.

Other postgraduate students have had difficulty in securing exemption during the thesis ‘writing-up’ period after the formal end of the course. While some local authorities are sympathetic and extend student status after the end of the course, others have regarded such students as liable as they are no longer ‘within the period of their course’. A High Court ruling served to harden some local authorities’ views (although in that case, the student was trying to claim exemption for a writing-up period lasting more than two years).<sup>27</sup> The case has been used by some local authorities to suggest that PhD students are ineligible for exemption even during the formal period of the course, but this should be challenged as the ruling related only to a writing-up period.

If this affects you, get advice from your students’ union or institution’s advice centre. In particular, check the dates of the course given by the institution and be prepared to challenge this if necessary.

**Note:** if you have completed an undergraduate course and intend to start a postgraduate course in the following academic year, you are not a student as you are not within the period of either course. Depending on your circumstances, however, you may be able to claim CTR or a discount on the bill.

#### Foreign language assistants

You are classed as a student, and so disregarded for discount purposes, if you are registered with the British Council as a foreign language assistant and have a current appointment as a foreign language assistant at a school or other educational institution in Great Britain.<sup>28</sup>

#### Spouse, civil partner or dependant of foreign students

A foreign student's spouse, civil partner or dependant who is prevented from working or claiming benefit must be disregarded for discount purposes or may be exempt.<sup>29</sup> To qualify, the spouse/partner/dependant must not be a British citizen and must also be someone who, under immigration rules, is not allowed either to work in the UK or claim benefit.

The decision in *Harrow London Borough Council v Ayiku*<sup>30</sup> clarified that the non-British spouse of a student was a 'relevant person' exempt from liability to pay council tax, although she was allowed to work in the UK. A student's spouse who has limited leave to enter the UK is prevented, as a condition of her/his leave to remain in the UK, from claiming benefits or CTR (see Chapter 8).

It is sufficient for the non-British spouse of a student to satisfy one or other of the two conditions (either being prevented from taking paid employment or prevented from claiming benefits) so as to qualify as a relevant person.

#### Student nurses

Although the council tax legislation includes references to 'student nurses',<sup>31</sup> the definition refers to traditional hospital-based courses phased out in the 1990s, and so is now redundant in practice. However, students on nursing courses in higher education are regarded as 'students' under the same definition that applies to other full-time students, as made clear in amendments to the council tax regulations in 1994.<sup>32</sup> If an authority seeks proof of 'student nurse' status, it should be directed to these regulations.

#### Apprentices disregarded for discount purposes

An apprentice is someone, of any age, who is:

- employed for the purpose of learning a trade, business, profession, office, employment or vocation;
- undertaking a programme of training leading to an accredited qualification;
- receiving a salary or allowance (or both) of no more than £195 a week before any deductions for income tax and national insurance.<sup>33</sup> Guidance to local

authorities advises that when calculating earnings, any overtime or bonuses should be ignored.

The training must lead to an accredited qualification.<sup>34</sup> Before awarding a discount, most local authorities require either a copy of the apprenticeship agreement or a signed copy of an agreement between the apprentice and the employer, together with copies of wage slips.

## Severely mentally impaired people disregarded for discount purposes

For council tax purposes, you are considered '**severely mentally impaired**' if you have a severe impairment of intelligence and social functioning (however caused) that appears to be permanent.<sup>35</sup> This includes where you are severely mentally impaired as a result of a degenerative brain disorder such as a stroke, Alzheimer's disease or other forms of dementia. To count as severely mentally impaired, you must have a certificate of confirmation from a registered medical practitioner. Doctors must issue certificates free of charge.<sup>36</sup>

To qualify for the discount, you must be entitled to one of the following:<sup>37</sup>

- universal credit (in England and Wales, the limited capability for work/limited capability for work and work-related activity element must be included);
- employment and support allowance;
- attendance allowance (AA);
- the standard or enhanced rate of the daily living component of PIP;
- the middle or highest rate care component of disability living allowance (DLA);
- armed forces independence payment;
- the disability element in working tax credit;
- incapacity benefit (IB) or severe disablement allowance;
- an increase in disablement pension for constant attendance;
- unemployability supplement (this was abolished in 1987 but existing claimants remain entitled);
- constant attendance allowance or unemployability allowance payable under the industrial injuries or war pension schemes;
- income support including a disability premium because of incapacity for work.

If you would have been entitled to one of the above benefits except for the fact that you have reached pension age, you still qualify for the discount.<sup>38</sup>

You also qualify if your partner gets income-based jobseeker's allowance which includes a disability premium or higher pensioner premium because:<sup>39</sup>

- s/he gets the long-term rate of IB; *or*
- s/he was either in receipt of long-term IB up to pension age and is still alive or is entitled to AA/DLA but has been in hospital for more than 28 days.

#### Carers disregarded for discount purposes

You are disregarded for discount purposes as a carer if you are providing care or support (or both):<sup>40</sup>

- to someone in receipt of certain benefits (see below); *or*
- to another person on behalf of a local authority or charitable body (see p115); *or*
- to another person, are employed by her/him and were introduced by a charitable body (see p115).

#### Caring for someone in receipt of certain benefits

You must:

- be resident in the same dwelling as the person being cared for; *and*
- be providing care for at least 35 hours a week on average; *and*
- not be the partner of the person being cared for, or, if the person needing care is a child under 18, not be the child's parent; *and*
- be caring for someone entitled to:<sup>41</sup>
  - lower or higher rate AA (only the higher rate in Scotland); *or*
  - the middle or highest rate care component of DLA (only the highest rate in Scotland); *or*
  - the standard or enhanced rate of the daily living component of PIP (only the enhanced rate in Scotland); *or*
  - armed forces independence payment; *or*
  - an increase in constant attendance allowance under the industrial injuries or war pensions scheme; *or*
  - the highest rate of constant attendance allowance payable on top of full-rate disablement benefit paid for an industrial injury.

More than one person living in the same dwelling can count as a carer. You do not have to claim carer's allowance to qualify for this disregard, and your income and savings will not affect your eligibility.

#### Example

Ajmal and Alya have a son aged 21. He is severely mentally impaired and gets PIP at the highest rate. Both parents care for their son for at least 35 hours a week, so they both should be disregarded for discount purposes. As their son is also disregarded, their council tax bill should be reduced by 50 per cent. All three occupiers are disregarded, but cannot claim an exemption.

A dwelling left empty by a carer is exempt, whether or not you meet any of the above criteria. A dwelling left empty by someone who has moved to receive care elsewhere is also exempt (see p57).

For more information on carers and council tax, see [carersuk.org](http://carersuk.org).



### Carers providing care on behalf of a local authority or charitable body

You must:

- be providing the care or support on behalf of a local authority, the Court of Common Council of the City of London, the Council of the Isles of Scilly, a government department or a charitable body, and be resident in premises provided by, or on behalf of, that organisation, so that the best care can be provided; *and*
- be engaged or employed for at least 24 hours a week; *and*
- be paid no more than £44 a week.

### Carers introduced by a charitable body

You must:

- be employed to provide care or support by the person who needs the care for at least 24 hours a week; *and*
- be earning no more than £44 a week from this employment; *and*
- have been introduced to the person by a charitable body; *and*
- be resident in premises provided by, or on behalf of, the person being cared for to enable the best care to be provided.

### People in hospital, care homes and hostels disregarded for discount purposes

If you have a short stay in **hospital**, it has no effect on council tax liability or the amount of tax that must be paid. If you have been, or are likely to be, in a hospital for so long that you can no longer be considered to be solely or even mainly resident in your home, you should be ignored for the purpose of a discount. A dwelling left empty because you are solely or mainly resident in hospital is exempt from council tax (see p55).

Most hospitals are subject to non-domestic rates, but some types of long-stay hospitals can be considered dwellings for council tax purposes. Patients who are solely or mainly resident in such a hospital are disregarded for discount purposes.<sup>42</sup> In this context, and for the purpose of exemptions, a 'hospital' means:<sup>43</sup>

- an NHS hospital; *and*
- a military, air force or naval unit or establishment in which medical or surgical treatment is provided within the meaning of the Armed Forces Act 2006.

The owners, rather than the residents, of **care homes**, **independent hospitals and hostels** are liable for the council tax (see p82). The owners may be eligible for a disability reduction (see p97). If you are solely or mainly resident in such accommodation, you are disregarded for discount purposes if you are receiving care or treatment (or both) in the home, hospital or hostel.<sup>44</sup> If you have left your own home empty, it may be exempt from the council tax. See p55 for more details.

You are disregarded for discount purposes if you are living in a **hostel for homeless people**<sup>45</sup> – eg, run by the Salvation Army or Church Army. Most of the accommodation must be communal (ie, not divided into self-contained units) and most agreements to occupy the accommodation must be under licences which do not constitute tenancies. The disregard applies to resident staff as well as residents, provided the accommodation is predominantly for those with no fixed abode on the terms and conditions specified.

### **People in prison or other forms of detention disregarded for discount purposes**

In many cases, if you are in prison or some other form of detention, you are considered no longer solely or mainly resident in a dwelling and should therefore be ignored for discount purposes. Dwellings left empty by those in detention are exempt from council tax (see p54). In certain instances, however, detention may be for such a short period that you are still considered mainly to occupy the dwelling. In this case, a disregard for discount purposes applies if you are:<sup>46</sup>

- detained in a prison, a hospital or any other place by a British court;
- detained under the deportation provisions of the Immigration Act 1971;
- detained under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995;<sup>47</sup>
- imprisoned, detained or in custody for more than 48 hours under the Armed Forces Act 2006.<sup>48</sup>

If you are in police custody before your first court appearance, or are detained for non-payment of council tax in England or Wales, or non-payment of a fine in England, Wales or Scotland, you are not treated as detained for the purpose of a discount.<sup>49</sup> If you are on temporary release, you are treated as being detained.

### **Members of religious communities disregarded for discount purposes**

You are a member of a religious community if:<sup>50</sup>

- the principal occupation of the community consists of prayer, contemplation, education, the relief of suffering, or any combination of these; *and*
- you have no income or capital of your own and are dependent on the community to provide for your material needs.

In considering whether or not you have any income, the local authority should disregard any pension(s) from former employment.

The owner, rather than the residents, is liable for the tax on a dwelling occupied by a religious community (see p86).

## **Members of visiting international headquarters and defence organisations disregarded for discount purposes**

A member (or dependant) of certain international headquarters or defence organisations listed in section 1 of the International Headquarters and Defence Organisations Act 1964 is disregarded for discount purposes.<sup>51</sup>

## **Members of visiting forces disregarded for discount purposes**

Members of visiting forces and any of their dependants who are neither British citizens nor ordinarily resident in the UK are disregarded for the purposes of a discount.<sup>52</sup> A dwelling is exempt from council tax if one of the liable people has a relevant association with a visiting force. See p61 for more details on exemptions. Consequently, this disregard only applies if none of the liable people have a relevant association. This would be the case, for example, if a member of a visiting force lodges with a British citizen.

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## **4. Getting a discount**

Before calculating the council tax liability of any dwelling, a local authority should take reasonable steps to establish whether any discount should be granted.<sup>53</sup> The failure of a billing authority to take reasonable steps to ascertain which dwellings may be eligible to a discount may be raised in appeals about failure to award discounts, backdated claims for discounts or a refusal by billing authorities to repay any overpaid tax where discount was not awarded.<sup>54</sup>

Scottish local authorities are obliged to actively seek confirmation on the use of properties as second homes and long-term empty properties, now that the discount or 'variation' applied can be modified up or down (see p120).

If the local authority has reason to believe that a discount applies, this should be assumed when calculating the council tax liability for the dwelling,<sup>55</sup> even if it does not have conclusive evidence.

## **Applications**

If the local authority has not granted a discount, a liable person may request one in writing. Many local authorities have paper and online claim forms for council tax discounts. Any relevant evidence supporting the request should be included. In the case of a student, a student's certificate may prove useful but is not necessary. In the case of someone who is severely mentally impaired, a medical certificate is required.

## **Backdating discounts**

Authorities must grant discounts for a past period if the appropriate conditions were met, as there is no time limit on backdating discounts. Unlike the provisions for backdating most social security benefits, there is no requirement to show 'good cause' before a discount is backdated, or any other restriction in the legislation. There is no time limit on how much backdating you can apply for (ie, you can apply for a discount to be backdated further than the six years imposed by the Limitation Act 1980), but in some cases the local authority may raise the decision in *Arca v Carlisle City Council*<sup>56</sup> and suggest that backdating can only be allowed for six years. However, in recent decisions, the President of the Valuation Tribunal for England explained that the six-year period only relates to the right to bring an appeal against a decision, rather than on legal proceedings, such as starting an appeal to the valuation tribunal. In particular, a restriction may not apply where the local authority has not taken the reasonable steps required to establish whether entitlement to discount applies.<sup>57</sup> Other exceptions exist to the six-year limit – eg, under section 32 of the Limitation Act 1980 where relevant evidence has been concealed, where a fraud has been committed or where there has been a mistake.

If a discount should not have been granted for a past period, it may be withdrawn and you may have to appeal to the valuation tribunal.

Not only are the restrictions imposed on backdating by *Arca* much more limited than some councils suggest, but this decision is only persuasive in Wales and Scotland. Moreover, the Limitation Act does not apply in Scotland where the equivalent legislation (Prescription and Limitation (Scotland) Act 1973) sets a 20-year limit.

## **The duty to correct false assumptions**

If a discount has been granted, the local authority must inform the liable person in writing, normally on the tax bill. If that person, or any jointly liable person, has reason to believe that the discount should not have been awarded or that a smaller discount should be in place, s/he should write and advise the local authority within 21 days of first having reason to believe the discount was incorrect.<sup>58</sup> This obligation only arises before the end of the financial year following the financial year in respect of which the local authority's assumption about the discount was made.<sup>59</sup>

## **Penalties**

The local authority has the discretion to impose a penalty of £70 (in England) and £50 (in Wales or Scotland) on a liable person who fails to notify it that a discount should not have been granted.<sup>60</sup> The penalty may be imposed on someone who, through negligence, fails to promptly notify the billing authority of a relevant change in circumstances or who makes an incorrect statement. An English or



Welsh authority may quash such a penalty. A Scottish local authority may revoke the imposition of such a penalty if the person on whom it was imposed had a reasonable excuse for the failure.<sup>61</sup> Each time the local authority repeats the request and the person continues to fail to supply the information, a further £280 penalty in England, or a further £200 penalty in Wales and £500 in Scotland, can be imposed.<sup>62</sup>

In Scotland, the maximum fine for providing false or misleading information to obtain a reduction that is not due or to avoid a punitive 100 per cent increase if it truly is a long-term empty property is £500.<sup>63</sup>

An appeal against the imposition of a penalty may be made (see Chapter 11).<sup>64</sup> If you appeal, the penalty need not be paid until the appeal has been decided.

The billing authority may offer civil penalties as an alternative to a criminal prosecution (see Chapter 5).

## 5. Unoccupied dwellings discounts

Local authorities have a discretion to award discounts for certain classes of unoccupied dwellings – ie, in which no one has sole or main residence. The discount can be reduced ('varied' in Scotland) as the local authority sees fit.<sup>65</sup>

See p122 for information about long-term empty dwellings and second homes.

### England and Wales

Many authorities offer no discount for such properties while others offer a short period of exemption (eg, one month) followed by full liability – or a short period of exemption, followed by a longer period of discount, followed by full liability. Contact your local authority to find out what discount, if any, it is allowing. After one year in Wales or two years in England, the rules for long-term empty properties apply (see p122).

### Dwellings where discount cannot be changed

Local authorities cannot reduce the amount of discount applicable to some properties. These dwellings receive a discount of 50 per cent. This includes properties which consist of a pitch occupied by a caravan, a mooring occupied by a boat, job-related dwellings, and unoccupied dwellings left empty because a person is required to occupy another dwelling because of her/his job (see p121).

#### Scotland

Scottish local authorities can apply a variable discretionary reduction to empty dwellings and dwellings that are second homes.<sup>66</sup>

##### *Unoccupied dwellings and second homes<sup>67</sup>*

An 'unoccupied dwelling' is a dwelling which is no one's sole or main residence but is not a second home.

A 'second home' is a furnished dwelling which is no one's sole or main residence but the liable person can produce evidence to establish that it is lived in, other as a sole or main residence, for at least 25 days during any period of 12 months.

The discount is 50 per cent for every day where there is no resident in the dwelling.<sup>68</sup> However, the local authority may reduce the discount to any percentage not less than 10 per cent.

Where the property has been unoccupied as a sole or main residence for a continuous period exceeding 12 months, the local authority can:<sup>69</sup>

- apply no discount; or
- increase the amount of council tax payable by up to 100 per cent.

The local authority may also modify for different cases, or different classes of case, including for different areas.

If the dwelling is a second home, no modification may be made to impose an increase in council tax liability, and:<sup>70</sup>

- the discount percentage may not be greater than 50 per cent;
- the discount percentage may not be less than 10 per cent;
- the modification can impose no variation in council tax liability.

Unoccupied properties for sale or for let are protected from variation where they are continuously unoccupied for less than two years and are being marketed on fair terms and for a fair price and where an offer to purchase/rent on such terms would be acceptable by the owner.<sup>71</sup>

Note that occupation as a sole or main residence of less than three months' duration within any 12-month period is to be regarded as continuously unoccupied.

Purpose built holiday homes and job-related dwellings (see p121) are subject to the 50 per cent discount and cannot be varied.<sup>72</sup>

Unoccupied dwellings undergoing or requiring major repair work to make them habitable, and unoccupied dwellings undergoing structural alteration, are protected for a six-month period from the day the property was purchased by the liable person.<sup>73</sup>

The council cannot discriminate between private persons and social landlords solely on the grounds of ownership.

## Job-related dwellings and discounts

A job-related dwelling is one provided to you or your partner because of your or her/his employment and which:<sup>74</sup>

- is necessary in order to do the job properly; *or*
- has been provided so that duties are performed better and where it is customary for employers to provide accommodation to employees or under contract; *or*
- is part of special security arrangements.

Job-related dwellings include any accommodation provided as a second home as part of your employment (eg, a live-in caretaker), and property owned as a second home if you are required by your employment to occupy another dwelling – eg, you are a publican who is required to live in other licensed premises as a tenant of a brewery.

If you also have a second home in England on which council tax is payable, the local authority in which the second home is situated is prevented from reducing the 50 per cent discount.

In Scotland, to be job-related, the dwelling must be owned or tenanted by someone whose sole or main residence is a different dwelling.<sup>75</sup>

## Company directors and partnerships

If the dwelling is provided by a company and you are either a director (as defined by sections 67 and 69 of the Income Tax (Earnings and Pensions) Act 2003) of it or an associated company, the local authority may reduce the discount unless:<sup>76</sup>

- you are employed as a full-time director; *or*
- the company is non-profit making; *or*
- the company is established for charitable purposes.

It is also crucial that you actually reside in the dwelling; a few nights each week will not be sufficient.<sup>77</sup>

## Ministers of religion

Ministers of any religious denomination who are required to live in premises to perform their duties of office come within the definition of those with a job-related dwelling and will be entitled to a discount. This discount also applies to the spouse or partner of the minister.<sup>78</sup> Additionally, if the minister also has a second home on which council tax is chargeable, the local authority is prohibited from reducing the council tax discount below 50 per cent.<sup>79</sup>

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## **6. Miscellaneous discounts**

Local authorities have the power to give discretionary discounts.<sup>80</sup> Examples include hard-to-sell property, single occupiers called up for 28 days or more as members of the reserve forces, and occupied and unoccupied property without the benefit of mains services – eg, beach chalets.<sup>81</sup> You should, therefore, check with your local authority whether additional discounts are available.

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## **7. Premiums on long-term empty and second homes**

To help tackle housing shortages, local authorities have the discretion to charge increased amounts of council tax on long-term empty properties and second homes.

Properties which have been empty for one year or more (in Wales and Scotland) or two years or more (in England) are classified as ‘long-term empty properties’.<sup>82</sup> This includes periods where the property is empty and where it is undergoing structural repair or alteration work, or is unoccupied and unfurnished, such as newly built properties. The question of whether a property is furnished or unfurnished is a question of fact for the valuation tribunal.<sup>83</sup> Local authorities have discretion to charge a premium on long-term empty properties – ie, to increase the amount of council tax payable. While the decision to make a determination is for billing authorities to make, the government expects that ‘due consideration is given to the health of the local housing market when making determinations’.<sup>84</sup>

There is no power for English and Scottish authorities to charge a premium on second homes.<sup>85</sup>

Properties which are vacant for shorter periods of time may be exempt (see Chapter 4) or have a discount applied (p119). Local authorities also have powers to apply discretionary reductions in cases where homes are empty due to special circumstances – eg, hardship (see p125), flooding or fire.

Exemptions may still be claimed for previous years in some cases (see Chapter 4).

### **England**

Local authorities can increase the amount of council tax payable.<sup>86</sup> In England, a dwelling is ‘long-term empty’ if it has been continuously empty and substantially unfurnished for over two years. Some exceptions apply (see p125). Local authorities have discretion on whether to apply a premium, and the exact rates to be charged, which take into account local circumstances.



### Maximum premium amounts<sup>87</sup>

	Maximum premium
From 1 April 2013	50 per cent
From 1 April 2019	100 per cent
From 1 April 2020	100 per cent (property empty for less than five years) 200 per cent (property empty for over five years)
From 1 April 2021	100 per cent (property empty for less than five years) 200 per cent (property empty for between five and 10 years) 300 per cent (property empty for over 10 years)

### Example

Bella and Jake bought a property three years ago. They are majorly renovating it in their spare time and the property is unoccupied and substantially unfurnished. The local authority applies the full premium of 100 per cent. The monthly council tax due on the property is £300, made up of the full charge (£150) plus a premium of 100 per cent (£150).

## Wales

A billing authority may decide that the discount on any class of dwelling prescribed by the Secretary of State where there is no resident can be reduced or removed altogether.<sup>88</sup>

Local authorities have discretion to charge a premium of up to 100 per cent of the standard rate of council tax on long-term empty homes<sup>89</sup> – ie, up to doubling the amount payable. Some exceptions apply (see p125). In Wales, a long-term empty dwelling is a dwelling which is both unoccupied and substantially unfurnished for a continuous period of at least one year.<sup>90</sup> The furnishing or occupation of a dwelling for one or more periods of six weeks or less during the year will not affect its status as a long-term empty dwelling<sup>91</sup> – ie, its status as a long-term empty dwelling cannot be altered if you take up residence or install furniture for a short period.

As originally enacted, local authorities may specify different percentages (up to a maximum of 100 per cent) for different dwellings based on the length of time for which they have been empty, with the aim of applying stepped incremental increases over time.<sup>92</sup>

The billing authority may determine that the amount of council tax payable in respect of the dwellings is to be increased by up to 100 per cent. For long-term empty homes, the billing authority may specify different percentages for different dwellings based on the length of time for which they have been empty.<sup>93</sup>

#### *What factors should the local authority consider when using discretion to charge a premium?*

Guidance lists the following factors to assist local authorities when deciding whether to set a premium.<sup>94</sup> It is not exhaustive:

- numbers and percentages of long-term empty homes or second homes in the area;
- distribution of long-term empty homes or second homes and other housing throughout the authority and an assessment of their impact on property values in particular areas;
- potential impact on local economies and the tourism industry;
- patterns of demand for, and availability of, affordable homes;
- potential impact on local public services;
- potential impact on the local community;
- other measures that are available to increase housing supply;
- other measures that are available to help bring empty properties back into use.

Local authorities in Wales have discretion to charge second home owners an additional council tax premium up to a maximum of 100 per cent – ie, up to doubling the amount payable.<sup>95</sup> A second home is a dwelling which is not your sole or main home and is substantially furnished.

For a premium to apply to a second home, a billing authority must make a determination under section 12B of the Local Government Finance Act 1992 at least one year before the beginning of the financial year to which the premium relates – ie, for a premium to apply from 1 April 2021, a billing authority must make a determination before 1 April 2020.

Exceptions include job-related dwellings, seasonal holiday homes where year-round occupancy is prohibited, occupied caravan pitches and boat moorings, properties being marketed for rent or sale (for up to one year), annexes and dwellings which would be occupied if the occupier was not serving with the armed forces.

## Scotland

Scottish local authorities have the discretion to vary the amount that can be charged on long-term empty properties so that a premium of up to 100 per cent of the standard council tax can be applied, unless the property qualifies for an exemption (see p125).<sup>96</sup> The premium can be applied to homes which have been unoccupied for one year or more. An ‘unoccupied dwelling’ is any dwelling which is not someone’s sole or main residence, but does not fall within the definition of a second home (see p120 for the definition of a second home). An unoccupied dwelling may be either furnished or unfurnished but is either not lived in at all or is lived in for less than 25 days in any 12-month period. The premium only applies to the council tax proportion of the council tax bill, not the water charge. If your property was not lived in for at least 25 days in the last 12 months, then it is required to be classified as an unoccupied property rather than as a second home.

A Scottish billing authority may also decide to grant no discount in respect of second homes.<sup>97</sup>

If the local authority classes your second home as an empty property and applies a premium, you may appeal. It is for you to prove that your property is a genuine second home and you may need to provide evidence such as utility bills.

## **When a premium cannot be applied**

A dwelling is exempt from the premium if it:<sup>98</sup>

- would be someone's sole or main residence if s/he was not residing in armed forces accommodation;
- is an annexe forming part of, or being treated as part of, the main dwelling;
- is genuinely being marketed for sale or for rent. In England and Wales, this has a one-year limit starting from the date that the property is placed on the market. In Scotland, the time limit is two years;<sup>99</sup>
- was operating as a residence, even if not a sole or main residence.<sup>100</sup>

## **Support for owners of empty property**

To help bring empty properties to back into use to meet housing demand, most local authorities have 'empty homes' or 'urban renewals' teams. Examples of the support available include:

- loans for central heating installation, boiler replacement and heating efficiency measures;
- empty homes grant to help with the costs of refurbishment;
- matching service which matches empty homes with possible buyers;
- providing a letter to support VAT reduction for renovation work.

Contact your local authority to find out what is available in your area. Your local authority's council tax reduction scheme may also make provision for certain classes of dwelling.

## **Discretionary reductions for long-term empty and second homes**

In England and Wales, local authorities can apply their discretionary powers to reduce council tax liability under section 1 of the 3A Local Government Finance Act 1992 (see p177) to reduce liability in respect of a premium. If there are good reasons why your property cannot be lived in or why it cannot be sold or let, or if paying the premium is causing you hardship, apply for a discretionary reduction (see p177). Some authorities have indicated that they will not grant section 13A reductions to people who have invested in the property market and found the value of their investments decline.<sup>101</sup> However, a local authority must not fetter its discretion when considering to exercise its discretionary powers.<sup>102</sup>

## 8. Appeals

If the local authority refuses to grant a discount or if you disagree about your liability to pay a premium, you can appeal in writing if you are an 'aggrieved person'.<sup>103</sup> There is no time limit for making such an appeal and you can ask for backdating. You are an 'aggrieved person' if you are liable to pay the council tax or you are the owner (if different). The appeal letter should give the reasons why the discount should be granted. The local authority has two months in which to answer.<sup>104</sup> If no discount is granted, or if the local authority fails to answer within two months of receiving the appeal, you can make a further appeal to the Valuation Tribunal for England or to the Valuation Tribunal for Wales. In Scotland, a further appeal is made by writing again to the local authority. The local authority should pass the appeal to the secretary of the relevant local valuation appeal committee. See Chapter 11 for further details.<sup>105</sup>

If a local authority reduces the amount of discount available and you experience hardship, an application may be made to reduce the amount of council tax payable. The local authority must consider the application to reduce the sum on an individual basis.

The local authority may enforce payment of the original bill while the appeal is outstanding (see Chapter 10). The local authority may be prepared to agree to suspend recovery action while awaiting the outcome of the appeal. Alternatively, an adjournment may be sought from the magistrates' court or sheriff court if recovery proceedings are commenced while a formal appeal is underway.<sup>106</sup>

## Notes

### 1. **25 per cent discount for one resident**

- 1 **EW** s2(2)(d) LGFA 1992  
**S** s71(2)(d) LGFA 1992
- 2 Reg 7(2) Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020 SSI No.4

### 2. **Who counts for discount purposes**

- 3 **EW** s6 LGFA 1992  
**S** s99(1) LGFA 1992

### 3. **Who is disregarded for discount purposes**

- 4 **EW** s11 and Sch 1 LGFA 1992;  
CT(DD)O; CT(APDD) Regs  
**S** CT(D)(S)CAO; CT(D)(S) Regs
- 5 s11 LGFA 1992
- 6 DCLG Council Tax Information Letter 2/2006 stated: 'It is our view that, under Schedule 7 to the Local Government Finance Act 1992, (these) 19 year olds will fall to be disregarded for CT purposes.'
- 7 Sch 1 para 3 LGFA 1992



- 8 **EW** CT(APDD) Regs  
**S** CT(D)(S)CAO
- 9 **E** CT(DD)O  
**EW** Reg 3 CT(EDDD)(A)O  
**S** Art 8 CT(D)(S)CAO
- 10 Sch 1 para 6 CT(D)(S) Regs
- 11 Within the meaning of ss17(6) and 29(7) Children (Scotland) Act 1995
- 12 Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019 No.431
- 13 Sch 1 para 4 LGFA 1992
- 14 **EW** Art 4 CT(D)O  
**S** Art 6 CT(D)(S)CAO
- 15 **EW** Sch 1 para 5(1) CT(DD)O  
**S** Art 6(1)(b) and Sch 1 para 1(a) CT(D)(S)CAO
- 16 **EW** Sch 1 para 6(1) CT(DD)O  
**S** Sch 1 para 2 CT(D)(S)CAO
- 17 **EW** Sch 1 para 3 CT(DD)O  
**S** Art 2 CT(D)(S)CAO
- 18 Council Tax (Discounts) (Scotland) Amendment Order 2014
- 19 **EW** Sch 1 para 4(1) CT(DD)O  
**S** Art 6(4)(c) CT(D)(S)CAO
- 20 **EW** Sch 1 para 3 CT(DD)O as amended by reg 2(1), (2)(a) Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018 No.386  
**S** Arts 2 and 6(4)(e) CT(D)(S)CAO
- 21 Council tax information letter 5, 29 April 1996
- 22 Kent VTE Appeal Nos.1765M88934/176C and 1765M88933/176C
- 23 Sch 1 para 5 LGFA 1992
- 24 Art 5 CT(DD)O
- 25 Kent VTE Appeal No.2220M23702/148C/1
- 26 *Feller v Cambridge City Council* [2011] EWHC 1252 (Admin)
- 27 *Fayad v Lewisham LB* [2008] EWHC 2531 (Admin)
- 28 Art 4 and Sch 1 para 2 CT(DD)O
- 29 CT(DD)(A)O, as amended. See also CT(ED)(S)(A)O 1995 and CT(D)(S)(A) Regs.
- 30 *Harrow LBC v Ayiku* [2012] EWHC 1200
- 31 Sch 1 para 7 CT(DD)O
- 32 Council Tax (Discount Disregards) (Amendment) Order 1994 No.543
- 33 **E** Amended by art 2(2) CT(DD)(A)(E)O  
**W** Amended by CT(DD)(A)(W)O  
**S** CT(D)(S)CAO
- 34 **EW** Art 4(b)(i) and b(ii) CT(DD)O; art 2(3) and Sch 3 Deregulation Act 2015 Consequential Order 2015 No.971
- 35 Sch 1 para 2 LGFA 1992
- 36 **EW** Reg 22 and Sch 2 National Health Service (General Medical Services Contracts) Regulations 2015 No.1862  
**S** Reg 25 and Sch 4 National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 No.66
- 37 **EW** Art 3 CT(DD)O  
**S** Art 4(2) CT(S)(D)CAO  
*Brown v Hambleton DC* [2021] EWHC (Admin) 1
- 38 **EW** CT(DD)O  
**S** Art 4(3) CT(S)(D)CAO
- 39 **EW** CT(DD)O  
**S** CT(D)(S)CAO
- 40 **E** CT(APDD) Regs, amended by The Council Tax and Non-Domestic Rating (Amendment) (England) Regulations 2006 No.3395  
**W** Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2007 No.581  
**S** Reg 2 CT(D)(S) Regs 1992
- 41 **EW** Art 3 (2) CT(DD)O  
**S** Reg 2 CT(D)(S) Regs
- 42 Sch 1 para 6 LGFA 1992
- 43 Sch 1 para 6 LGFA 1992; National Health Service Act 2006; National Health Service (Wales) Act 2006; s108 National Health Service (Scotland) Act 1978
- 44 Sch 1 paras 7-8 LGFA 1992
- 45 Sch 1 para 10 LGFA 1992
- 46 Sch 1 para 1 LGFA 1992  
**EW** CT(DD)O  
**S** Reg 3 CT(D)(S)CAO
- 47 **S** Sch 1 para 1(c)-(d) LGFA 1992
- 48 s300 Armed Forces Act 2006
- 49 Sch 1 para 1 LGFA 1992; art 9 SI 2010 No.813EW CT(DD)O
- 50 **E** CT(APDD) Regs  
**W** CT(APDD) Regs as amended by reg 2 Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019  
**S** CT(D)(S) Regs

- 51 Sch 1 para 11 LGFA 1992; The European Union Military Staff (Immunities and Privileges) Order 2009 No.887; The International Organisations (Immunities and Privileges) (Scotland) Order 2009 No.44E
  - 52 **EW** CT(APDD)(A) Regs  
**S** CT(D)(S)(A) Regs  
 See also The Visiting Forces and International Headquarters (Application of Law) (Amendment) Order 2009 No.705 and The European Union Military Staff (Immunities and Privileges) Order 2009 No.887
- 4. Getting a discount**
- 53 **EW** Reg 14 CT(AE) Regs 1992  
**S** Reg 12 CT(AE)(S) Regs
  - 54 *Singh v Leicester City Council*, VTE Appeal No.2465M142876/037C, 11 August 2015
  - 55 **EW** Reg 15 CT(AE) Regs 1992  
**S** Reg 13 CT(AE)(S) Regs
  - 56 *Arca v Carlisle City Council* [2013] RA 248; VTE 29 January and 20 March 2013, per Graham Zellick QC, President
  - 57 *HS v Leicester City Council* Appeal No.2465M142876/037C, 11 August 2015; *Holdsworth et al v City of Bradford MDC* Appeal No.2465M142876/037C, 6 July 2015
  - 58 **EW** Reg 16 CT(AE) Regs 1992  
**S** Reg 15 CT(AE)(S) Regs
  - 59 **EW** Reg 16 CT(AE) Regs 1992  
**S** Reg 15 CT(AE)(S) Regs
  - 60 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992
  - 61 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992
  - 62 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992
  - 63 Sch 3 para 2(1A) LGFA 1992
  - 64 **EW** s14(2) and Sch 3 LGFA 1992  
**S** s97(4) and Sch 3 LGFA 1992
- 5. Unoccupied dwellings discounts**
- 65 **E** s11A LGFA 1992  
**W** s12 LGFA 1992  
**S** Schs 1 and 2 CT(VUD)(S) Regs
  - 66 CT(VUD)(S) Regs
  - 67 Reg 2 CT(VUD)(S) Regs
  - 68 Reg 3 CT(VUD)(S) Regs
  - 69 Regs 4-6 CT(VUD)(S) Regs
  - 70 Reg 6(1A) CT(VUD)(S) Regs
  - 71 Sch 2 CT(VUD)(S) Regs
  - 72 Sch 1 CT(VUD)(S) Regs
  - 73 Reg 5 CT(VUD)(S) Regs
- 74 **E** Sch 1 CT(PCD)(E) Regs  
**W** Reg 6 Sch 1 Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998  
**S** Sch 1 para 2 CT(VUD)(S) Regs
  - 75 **S** Sch 1 paras 2(1) CT(VUD)(S) Regs
  - 76 **E** Sch 1 paras 2 and 3 CT(PCD)(E) Regs  
**W** Reg 6 and Sch 1 Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998  
**S** Sch 1 paras 2(6)-(7) CT(VUD)(S) Regs
  - 77 *Lever v Southwark LB* [2009] EWHC 536 (Admin), CO/9305/2008
  - 78 **E** Sch 1 CT(PCD)(E) Regs  
**W** Sch 1 para 3 CT(VUD)(W) Regs  
**S** Sch 1 paras 2(5)-(7) CT(VUD)(S) Regs
  - 79 **E** Regs 2 and 6 CT(PCD)(E) Regs  
**W** Reg 10 CT(VUD)(W) Regs  
**S** Reg 5 and Sch 1 CT(VUD)(S) Regs
- 6. Miscellaneous discounts**
- 80 s13A LGFA 1992
  - 81 Parliamentary Answer given in the House of Commons by John Healy, Minister for Local Government, 2 February 2009
- 7. Premiums on long-term empty and second homes**
- 82 **E** s11B(1)(b) LGFA 1992  
**W** ss112A and 112B LGFA 1992 as inserted by s139 Housing (Wales) Act 2014  
**S** Reg 6 CT(VUD)(S) Regs
  - 83 *Heslop v Sefton Council* [2017] EWHC 3041
  - 84 Department for Communities and Local Government, *Council tax empty homes premium: guidance for properties for sale and letting*, May 2013, para 5
  - 85 **E** Council Tax Information Letter: Definitions of Empty Homes and Second Homes, DCLG, 23 September 2014, available at [gov.uk/government/publications/council-tax-information-letter-definitions-of-empty-homes-and-second-homes](http://gov.uk/government/publications/council-tax-information-letter-definitions-of-empty-homes-and-second-homes)  
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  - 86 s11B(1)(b) LGFA
  - 87 s11(1A)-(1C) LGFA 11 as amended by s2 Rating in Common Occupation and Council Tax (Empty Dwellings) Act 2018
  - 88 Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998 No.105

- 89 ss12A and 12B LGFA 1992 as inserted by s139 Housing (Wales) Act 2014
- 90 Welsh Government, *Guidance on the Implementation of the Council Tax Premiums on Long-Term Empty Homes and Second Homes in Wales*, January 2016
- 91 s11B(9) LGFA 1992
- 92 Welsh Government, *Exemptions to the Council Tax premium on Long-Term Empty Homes in Wales*, 13 March 2015; s12A LGFA 1992
- 93 ss12A and 12B LGFA 1992; Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 No.2068
- 94 s12A(11) LGFA 1992; Welsh Government, *Guidance on the Implementation of the Council Tax Premiums on Long-Term Empty Homes and Second Homes in Wales*, January 2016
- 95 s112B LGFA 1992 as inserted by s139 Housing (Wales) Act 2014
- 96 Reg 6 CT(VUD)(S) Regs
- 97 CT(VUD) (S) 2013 as amended by reg 3 Council Tax (Variation for Unoccupied Dwellings) (Scotland) Amendment Regulations 2016 No.369
- 98 **E** Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003  
**W** Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015  
**S** Sch 2 para 2 CT(VUD)(S) Regs
- 99 Sch 2 para 1 CT(VUD)(S) Regs
- 100 *A v Ipswich BC* [2018] Appeal No.M0234114 20 December 2018
- 101 Oxford City Council Discretionary Discount Policy 2020, para 3
- 102 *Padfield v Minister of Agriculture* [1968] AC 997

## 8. Appeals

- 103 **EW** s16 LGFA 1992S s81 LGFA 1992
- 104 **EW** s16 LGFA 1992S s81 LGFA 1992
- 105 **EW** s16 LGFA 1992S s81 LGFA 1992
- 106 *Wiltshire CC v Piggin* [2014] EWHC 4386 (Admin)

## Chapter 8

# Council tax reduction schemes

### This chapter covers:

1. What is council tax reduction (below)
2. How council tax reduction schemes work (p134)
3. Council tax reduction schemes: pension-age rules (p138)
4. Council tax reduction schemes: working-age rules (p139)
5. Main council tax reduction (p142)
6. Alternative maximum council tax reduction ('second adult rebate') (p165)
7. Band E–H council tax reduction: Scotland (p168)
8. Extended and continuing reductions (p170)
9. Applications, decisions and awards (p171)
10. If you disagree with a council tax reduction decision (p176)
11. Discretionary reductions (p177)

### Key facts

- Council tax reduction (CTR) reduces the amount of council tax payable on your dwelling. It is not a benefit, but is a reduction in your liability for council tax.
- In **England and Wales**, local authorities may devise their own local CTR schemes which must meet minimum 'prescribed' requirements.
- One CTR scheme applies throughout **Scotland**, with no local variations.
- There are separate 'working-age' and 'pension-age' rules for CTR.
- Entitlement to CTR is means-tested – your entitlement normally depends on the level of your income and capital and your circumstances.
- Any non-dependants who live with you are normally expected to contribute to the council tax.
- If you disagree with a decision made by your local authority about your CTR, you may be able to challenge it.

## 1. What is council tax reduction

If you have a low income, you might qualify for council tax reduction (CTR). Whether you qualify, and the amount of CTR that is awarded, often depends on



where you live and your age, as well as your financial circumstances. Different rules apply in England, Wales and Scotland. In England and Scotland, there are different types of CTR available and you may qualify for a reduction in your council tax if you have another adult living with you who is not part of your family who has a low income, even if your income is not low. In England and Wales, you also can apply for discretionary council tax reduction if you have difficulty affording your council tax (see p177).

CTR may be referred to in your local authority area as council tax 'support' or 'rebate'. The regulations throughout Britain refer to making 'an application' for CTR and to people who receive it as 'applicants'. These are the terms used throughout this chapter. However, most local authorities administer CTR alongside the housing benefit (HB) scheme and so your local authority may issue a 'claim form' and refer to you as a 'claimant' if you make an application.

### *Council tax reduction during the coronavirus pandemic*

In England, in some circumstances, you may get an additional reduction in your council tax – called a 'hardship fund discount' – for the tax year 2020/21 (see p177).

In Wales, an additional £2.8 million has been announced to help with the increased demand on the CTR scheme caused by coronavirus.

In Scotland, the government has earmarked £50 million to meet increased demand for Scottish social security and support through the CTR scheme.

## National rules

CTR schemes differ in England, Wales and Scotland, and in each country there are two sets of rules: 'working-age' rules and 'pension-age' rules. In some circumstances, the working-age rules apply to you even if you are over pension age (see p139).<sup>1</sup> This chapter refers to people to whom the pension-age rules apply as 'pension-age' applicants and everyone else as 'working-age' applicants, whatever your actual age.

In **England**, each local authority is required to have its own CTR scheme, which must adhere to certain minimum requirements which are laid down in law (known as 'prescribed requirements' – see p133). The prescribed requirements set out, as a minimum, which pension-age applicants should qualify for CTR and the amount they should receive but give local authorities a great deal of discretion on the rules for working-age applicants.

In **Scotland**, there is a national CTR scheme which is administered by local authorities, with separate rules for pension-age and working-age applicants.

In **Wales**, each local authority is required either to have its own CTR scheme, which must adhere to minimum prescribed requirements, or to adopt the default CTR scheme which is laid down in law (see p133). The prescribed requirements set out, as a minimum, which pension-age applicants should qualify for CTR and

the amount they should receive. There are also minimum prescribed requirements for determining which working-age applicants qualify, and for calculating how much CTR they should get. This means local authorities in Wales have much less discretion than those in England in determining the working-age rules.

The pension-age rules for CTR are similar in all three nations, and in each local authority area. The level of support largely mirrors that previously available under the council tax benefit rules which existed until April 2013.

The working-age rules are the same throughout Scotland but may vary depending on which local authority area you live in in England and Wales. As a result, in England, there could be as many as 326 different local systems of support, each with its own rules, and 22 in Wales. Crucially, English local authorities may set a percentage of the council tax bill which all working-age applicants must pay, no matter how low their income, eg, one local authority sets a percentage of 50 per cent of the annual council tax bill.

If you live in **England or Wales** and the working-age rules apply to you, check the details of your local authority's CTR scheme. Many local authorities use the same application form as for HB, and have online calculators you can use to see if you might qualify. Always apply if your income is low, or you are having difficulty paying your council tax bill (see p171).

### CTR schemes in England, Wales and Scotland

	<i>England</i>	<i>Wales</i>	<i>Scotland</i>
<i>If the pension-age rules apply to you</i>	You can get CTR on up to 100 per cent of your bill, depending on your circumstances. See sections 2, 3 and 5. You can get CTR on up to 25 per cent of your bill, based on the income of a 'second adult'. See sections 2, 3 and 6.	You can get CTR on up to 100 per cent of your bill, depending on your circumstances. See sections 2, 3 and 5. There is no help based on the income of a 'second adult'.	You can get CTR on up to 100 per cent of your bill, depending on your circumstances. See sections 2, 3 and 5. You can get CTR on up to 25 per cent of your bill, based on the income of a 'second adult'. See sections 2, 3 and 6.
<i>If the working-age rules apply to you</i>	You can get CTR on a percentage of your bill, subject to a means test. See sections 2 and 4.	You can get CTR on up to 100 per cent of your bill, subject to a means test. See sections 2, 4 and 5.	You can get CTR on up to 100 per cent of your bill, depending on your circumstances. See sections 2, 4 and 5.

You may get CTR on a percentage of your bill, based on the income of a 'second adult' in some local authority areas. See sections 2, 4 and 6.	There is no help based on the income of a 'second adult'.	You can get CTR on up to 25 per cent of your bill, based on the income of a 'second adult.' See sections 2, 4 and 6.
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## Requirements for council tax reduction schemes in England and Wales

### Prescribed requirements and default schemes

In England and Wales, certain requirements which every local authority's CTR scheme must include are laid down in regulations. These are known as the 'prescribed requirements'.<sup>2</sup> Provided these requirements are met, local authorities are free to set the particular details of their CTR schemes themselves. If a local authority in Wales does not produce a scheme, a default scheme prepared by the Welsh government applies.

CTR schemes must provide for people, or classes of people, who are in 'in financial need'.<sup>3</sup> Schemes must state the classes of people entitled to a reduction,<sup>4</sup> which may be determined by reference to the income, capital or number of dependants of any person liable to pay council tax or of anyone else resident in the property, and whether the person has made an application for CTR.<sup>5</sup> The English prescribed requirements only specify that certain classes of pension-age applicants must be entitled to CTR; the Welsh prescribed requirements specify that certain classes of working-age and pension-age applicants must be entitled to CTR. Just as in Scotland, it is a requirement in both England and Wales that if you qualify for CTR as a pension-age applicant and your income is low enough, your CTR covers all of your council tax (unless a deduction is made because you have a 'non-dependant', such as an adult son or daughter, living with you).<sup>6</sup>

The prescribed requirements also set out other matters that must be included in CTR schemes. These include how applications for CTR and discretionary CTR can be made, and rules on backdating, extended CTR and appeals.<sup>7</sup>

### Consultation on schemes

Each financial year, local authorities in England and Wales must consider whether to revise or to replace their CTR schemes.<sup>8</sup> Before changing its CTR scheme, a local authority in England must consult with any major precepting authorities such as police and fire and rescue authorities and, in both England and Wales, the local authority must publish a draft scheme and consult with such 'other persons as the authority considers to be likely to have an interest in the operation of the scheme' (eg, council taxpayers).

If a reduction is to be reduced or removed, the billing authority can make such transitional provisions as it thinks fit.

If you want to challenge your local authority's CTR scheme or consider it has not followed the correct procedures when adopting or revising its CTR scheme, see p177.

## Online calculators

Most local authorities have an online benefit calculator on their websites. The calculator should enable you to put in your details and those of your partner to determine the amount of CTR you can get for the property.

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## 2. How council tax reduction schemes work

### Types of council tax reduction

If you meet the qualifying conditions you may qualify for one of the following types of council tax reduction (CTR):

- **main CTR** if you live in England, Wales or Scotland. Your entitlement to it depends on the amount of your council tax, your family's circumstances and the amount of your (and if you have a partner, your partner's) income and savings (see p142); *or*
- **alternative maximum CTR** (also called '**second adult rebate**') if you live in England or Scotland (it is not available in Wales) and another adult lives with you who is not part of your family and who is on a low income. Entitlement to it is not based on your needs or resources, but on the circumstances of the other adult (see p165); *or*
- **band E–H CTR** if you live in Scotland and your home is in council tax band E, F, G, or H. Your entitlement to it depends on the amount of your council tax and the amount of your income and savings (see p168).

**Note:** if you qualify for more than one type, you receive the one that gives you the largest reduction.

If you live in England or Wales and you cannot afford your council tax, you can apply for discretionary CTR (see p177).

See p135 for who counts as part of your 'family' for CTR.

### Who is eligible for council tax reduction

The following conditions apply to all CTR schemes in England, Scotland and Wales for both pension-age and working-age applicants. To qualify for CTR, you must:<sup>9</sup>

- be liable for council tax for the home (see p74); *and*
- satisfy the 'right to reside test' and the 'habitual residence test'; *and*
- not be subject to immigration control (although there are exceptions); *and*
- provide certain information in your application (see p171).



If you do not meet these conditions, you do not qualify for CTR.

See CPAG's *Welfare Benefits and Tax Credits Handbook* for information on who is a person subject to immigration control, and on the right to reside and habitual residence tests.

In Scotland and Wales, and in England if you are a pension-age applicant, to qualify for any type of CTR, you must also:

- be resident in the home and it must be your sole or main residence (see p136); *and*
- not be absent from the home (although some periods of temporary absence can be ignored – see p137).

These conditions are also likely to apply to you if you live in England and are a working-age applicant, but your local authority is free to decide whether and how they apply. See p139 and check your local authority's CTR scheme for details.

Additional conditions apply for the different types of CTR, for:

- **main CTR**, see p142;
- alternative maximum CTR ('second adult rebate'), see p165;
- **band E–H CTR**, see p168.

## Who counts as your family for council tax reduction

For CTR, your 'family' includes:<sup>10</sup>

- your partner – ie, someone with whom you live as 'a couple'; *and*
- any children or young people for whom you or your partner are responsible who are members of your household (see p136).

You are treated as being responsible for a child or young person if s/he normally lives with you. Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household s/he is living in, s/he is treated as normally living with the person who is receiving child benefit for her/him.<sup>11</sup>

### Definitions

A '**child**' is anyone aged under 16 years old.

A '**young person**' is anyone aged 16 or over but under 20 who counts as a 'qualifying young person' for child benefit purposes (this does not include a young person who is getting universal credit, income support, income-based jobseeker's allowance, employment and support allowance, working tax credit or child tax credit. It also does not include anyone to whom section 6 of the Children (Leaving Care) Act 2000 (which relates to exclusion from benefits) applies).<sup>12</sup> For more about the definition of qualifying young person, see CPAG's *Welfare Benefits and Tax Credits Handbook*.

A 'couple' means:<sup>13</sup>

- two people who are married to each other or in a civil partnership and who are members of the same household; or
- two people who are not married to each other or in a civil partnership but are living together as if they were a married couple or civil partners.

There is a considerable amount of caselaw on when two people should be treated as living together as if they were a married couple or civil partners. You can argue that local authorities should take the same approach when making decisions on CTR. See CPAG's *Welfare Benefits and Tax Credits Handbook*.

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Provision is also made in the regulations for applicants in polygamous marriages. Seek advice if this applies to you.<sup>14</sup>

## Household

The term 'household' is not defined in the regulations, and so it should be given its ordinary meaning. See CPAG's *Welfare Benefits and Tax Credits Handbook* for further discussion of the term. The temporary absence of your partner or a child or young person does not affect her/his position as part of your household.<sup>15</sup>

Your local authority must treat a child or young person who is being looked after by, or in Scotland is in the care of, the local authority as a member of your household in any week (starting on a Monday) if:<sup>16</sup>

- s/he lives with you for part or all of that week; and
- the local authority considers that it is reasonable to do so, taking into account the nature and frequency of her/his visits to you.

A child or young person is not usually treated as a member of your household if s/he is being fostered by you or your partner, or s/he is placed or boarded with you prior to adoption.

## Where you are resident

For CTR, you are resident in the home where you live – ie, your normal 'sole or main residence' (see p77).<sup>17</sup> A property can count as your sole or main residence even if you spend substantial periods of time away from it, if it is the main place where you live. but if you are absent from the property you normally do not qualify for CTR unless your absence is temporary and can be ignored (see p137).

If you are not yet liable for the council tax on the property (eg, because you have not yet moved in) but are likely to be eligible for a CTR when you become liable, you can make your application in advance (see p171).

In some circumstances, you can argue that that you are resident in a property even if you have not stayed there – eg, you move your furniture and belongings in but then have to go into hospital.<sup>18</sup> However, if your main residence is elsewhere, you are not entitled to CTR for a dwelling – ie, for a second home.

## Temporary absence from home

In Scotland and Wales, and if you are a pension-age applicant in England, you cannot qualify for CTR if you are absent from home, although the following periods of temporary absence can be ignored. This is also likely to apply if you live in England and the working-age rules apply to you, but check your local authority's CTR scheme for details.

You can get CTR for up to **13 weeks** for your normal home while you are away from it, whatever the reason, provided you have not let or sublet your dwelling to someone else.<sup>19</sup> You must be unlikely to be away for longer than this.

You can get CTR for up to **52 weeks** provided you intend to return to the dwelling (normally within 52 weeks but, exceptionally, if you are unlikely to be absent for substantially longer), have not let or sublet it and fulfil certain conditions.

The circumstances in which you can remain eligible for up to 52 weeks include:<sup>20</sup>

- you are detained in custody on remand pending trial or sentence;
- you are on bail and required, as a condition of bail, to stay in a bail hostel or in premises approved under section 13 of the Offender Management Act 2007;
- you are a patient in a hospital or similar institution;
- you, your partner or a dependent child under 16 is undergoing, in the UK or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
- you are on (in the UK or elsewhere) a training course which will help you secure employment;
- you are undertaking medically approved care of a person residing in the UK or elsewhere;
- you are undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
- you are in the UK or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
- you are a student;
- you are away from home as a result of a fear of violence;
- you are in residential accommodation for a trial period and intend to return home if it is not suitable. You can only get a reduction for 13 weeks in any one trial period. If the accommodation is not suitable, you may have further trial periods, as long as they do not exceed 52 weeks.

**Note:** if you live in England, the above rules only apply if you are still in Great Britain during the period you are away from home. If you are outside Great Britain, you can get CTR for up to four weeks provided your absence is unlikely to last longer than four weeks. This can be extended for a further four weeks in limited cases. You can be absent from Great Britain for up to 26 weeks at a time if

your absence is for one of the reasons which would permit you to be absent for up to 52 weeks from Wales or Scotland. If you are a working-age applicant in England, your local authority can set its own rules. In this, and all other respects, these are unlikely to be more generous than those for pension-age applicants, but may be more restrictive.

### **3. Council tax reduction schemes: pension-age rules**

Council tax reduction (CTR) schemes in England, Wales and Scotland include two sets of rules: working-age rules and pension-age rules.

The pension-age rules for CTR are similar in England, Wales and Scotland. If the pension-age rules apply to you, you may qualify for:

- main CTR, if you or your partner get the guarantee credit of pension credit (PC) or if your income (and if you have a partner, your partner's income) is low enough when compared to the amount you are thought to need to live on and if you and your partner do not have more than £16,000 capital. For how main CTR is calculated, see p142; *or*
- alternative maximum CTR (second adult rebate) if you live in England or Scotland and you meet the conditions described on p165; *or*
- band E–H CTR if you live in Scotland and meet the conditions on p168.

If you live in England or Scotland and meet the conditions for more than one type of CTR, you receive only the type which would give you the highest reduction in your council tax liability.

**Note:** if you or your partner get the guarantee credit of PC, all of your income and capital are disregarded.

#### **When the pension-age rules apply**

The pension-age rules apply to you if:<sup>21</sup>

- you are at least pension age (see p139); *and*
- you or your partner do not get universal credit (UC – but see below), income support (IS), income-based jobseeker's allowance (JSA) or income-related employment and support allowance (ESA).

**Note:** in England, even if you or your partner are getting UC, the pension-age rules apply to you from the date you reach pension age, or if you have a partner from the date you both reach pension age. In this situation, the fact you get UC is disregarded until the end of your last UC assessment period. Any UC you get during this period is ignored when calculating your income. Otherwise, in England, Scotland or Wales if you or your partner get UC, IS, income-based JSA or



income-related ESA, the working-age rules apply to you even if you are pension age or over. If you are at least pension age but neither you nor your partner get UC, IS, income-based JSA or income-related ESA, the pension-age rules apply to you. This is the case even if you get PC. The pension-age rules are often more generous than the working-age rules, particularly in England. Since May 2019, if you are pension age or over but your partner is under pension age (ie, you are a member of a 'mixed-age couple'), you can only make a new claim for PC in limited circumstances and are expected to claim UC instead.

### ***Pension age***

Pension age is the minimum qualifying age for state pension. Since November 2018, pension age has equalised for men and women and is currently 66 years. The regulations refer to this as the 'qualifying age for state pension credit'.

To check your pension age, see [gov.uk/state-pension-age](https://gov.uk/state-pension-age).

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## **4. Council tax reduction schemes: working-age rules**

The 'working-age' rules apply if:<sup>22</sup>

- you are under pension age (and, in Scotland, your partner is under pension age); *or*
- you are pension age or over and you or your partner get universal credit (UC – but see below), income support (IS), income-based jobseeker's allowance (JSA) or income-related employment and support allowance (ESA).

See above for the meaning of pension age. In England when you reach pension age, or if you have a partner when you and your partner both reach pension age, the pension-age rules apply even if you get UC (see p138). In Scotland, if you are under pension age but your partner is not (ie, you are a 'mixed-age couple'), then unless one of you gets UC, IS, income-based JSA or income-related ESA, the working age-rules cannot apply to you. Instead, your partner must make the application and the pension-age rules apply. In England and Wales, if you are a mixed-age couple and neither of you gets UC, IS, income-based JSA or income-related ESA, whether the working-age rules or pension-age rules apply depends on which of you is the council tax reduction (CTR) applicant. Normally, the pension-age rules are more generous.

### **Working age rules in England**

Each English local authority decides which classes of working-age adults are eligible for CTR (provided those classes are decided on the basis of 'financial need'), and how much help is provided within its CTR scheme.<sup>23</sup>

You cannot qualify for working-age CTR unless you satisfy the general conditions for all CTR schemes described on p134. In addition, other qualifying conditions apply, which may vary between local authorities. Generally, local authorities calculate entitlement to main CTR for working-age applicants by setting a capital limit (ie, an amount of capital beyond which you do not qualify for CTR), and by comparing your income to your applicable amount, in the same way entitlement to main CTR is decided for pension-age applicants (see p143). However, many local authorities vary aspects of the calculation, for example, by adopting the following measures to reduce the support to working-age applicants.

- **Introducing a property banding cap.** Some local authorities limit the CTR they give to people living in properties in the higher council tax bands by restricting their CTR to the amount that they would receive if their property was in a lower council tax band.
- **Setting a minimum figure for CTR entitlement.** Some authorities have a policy of only granting a reduction above a minimum figure, such as £2, £4 or £5 a week. If your CTR would be below this figure, no CTR is paid.
- **Minimum payments.** Some CTR schemes may require you to pay at least some council tax each month if you are of working age. This can be set either by calculating your maximum CTR using only a percentage of your council tax or as an across-the-board cut to your actual entitlement.
- **Lowering the capital limit.** Pension-age applicants with capital equal to or below £16,000 can be entitled to CTR. However, some local authorities set the capital limit for working-age applicants as low as £6,000.
- **Changing the income taper.** Under the pension-age rules the amount of main CTR you are entitled to falls by 20 per cent, or 20 pence, for every extra £1 of income you have above your applicable amount. For working-age applicants, some local authorities increase this taper – eg, to 25 pence or 30 pence for each £1 of excess income.
- **Treating income differently for certain groups.** Some local authorities may vary the amount of or type of income that is disregarded when calculating CTR entitlement for working-age applicants or for certain groups of working-age applicants.
- **Removal or reduction of the second adult rebate.** If the pension-age rules apply to you and you share your home with someone on a low income, you may be entitled to a second adult rebate. Some local authorities either do not award second adult rebate to working-age applicants or reduce the amount of the second adult rebate.
- **Changing non-dependant deductions.** Some local authorities vary the deductions made for other adults living in your property.

**Note:** some local authorities protect some groups of working-age applicants from restrictions such as these.

Differences between CTR schemes for working-age applicants in England mean that the amount of CTR you are entitled to can vary considerably depending on where you live.

### Examples

Marcia and Grace, a couple in their 40s, live in a property which is in council tax band E. Marcia works part-time and earns £130 a week. Grace is off work sick and is getting statutory sick pay of £95.85 a week. They have no other income and have £9,000 in savings. Their council tax for 2020/21 is £36.70 a week.

If they lived in Adur, West Sussex, they would qualify for CTR of £14.49 a week.

If they lived in Bath, they would qualify for CTR of £1.19 a week (as CTR for working-age applicants in Bath is limited to a maximum of 78 per cent of the amount for a band D property).

If they lived in Waltham Forest, they would not qualify for CTR (as their savings are over Waltham Forest's capital limit of £6,000).

Dean, 45, is single and gets income-based JSA. He lives alone, in a local authority area where the maximum CTR allowed for people of working age is 80 per cent of their council tax liability.

Annual council tax for the property for 2020/21	£1,204.99
Less single occupancy discount of 25%	£903.74
Divided by 365 days = council tax daily liability	£2.48
Maximum CTR (80% x £2.48)	£1.98

If Dean's circumstances remain the same for the whole tax year, he must pay council tax of £181.04 for 2020/21.

## Working-age rules in Wales

Welsh local authorities can devise their own CTR schemes but the schemes must adhere to the 'prescribed requirements' laid down by the Welsh government (see p133). The prescribed requirements detail the classes of working-age applicants who must be entitled to main CTR and how their entitlement should be calculated. This means that Welsh local authorities have much less discretion than their English counterparts in determining CTR entitlement for working-age applicants.<sup>24</sup> If you live in Wales and the the working-age rules apply to you, see p142 for details of how main CTR is calculated.

There is no alternative maximum CTR scheme ('second adult rebate') in Wales (see p165). This means that both pension-age and working-age applicants can only qualify for CTR on the basis of the financial circumstances of their own household.

## **Working-age rules in Scotland**

The CTR scheme in Scotland is a national scheme governed by separate regulations for people of working age and pension age.

If you live in Scotland you may be entitled to main CTR, alternative maximum CTR (second adult rebate – see p165) or, if you live in a property in council tax band E, F, G or H, band E–H CTR (see p168). If you meet the conditions for more than one, you get type that gives you the highest reduction.

In Scotland, the personal allowances for children and young people are more generous. This means that when calculating your entitlement to main CTR you should use the allowances given in the third column in the table on p148.

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## **5. Main council tax reduction**

Your entitlement to main council tax reduction (CTR) depends on your family circumstances, your income and capital and, if you are a member of a couple, the income and capital of your partner. If there are any other adults living with you who are not jointly liable for council tax with you (other than your partner), a deduction may be made on the basis that they are expected to contribute to the council tax bill.

You qualify for main CTR if:

- you live in Wales or Scotland, or you live in England and the pension-age rules apply to you (see p138) (if you live in England and the working-age rules apply to you, see below); *and*
- you meet the general conditions on pp134–35 which apply to all CTR schemes; *and*
- unless you or your partner get the guarantee credit of pension credit (PC), you do not have capital of more than £16,000; *and*
- your income is low enough; *and*
- if you live in England or Scotland, the amount of main CTR you would qualify for is equal to or more than the amount of second adult rebate or, in Scotland, band E–H CTR you would qualify for (otherwise you get the other type of CTR instead).

**Note:** if you live in Wales, or if you live in Scotland and the working-age rules apply to you, and you are a student, you cannot qualify for main CTR unless you come within one of the groups of students excepted from this rule – eg, if you are a lone parent.<sup>25</sup> For further details, see CPAG's *Welfare Benefits and Tax Credits Handbook* – the exceptions are similar to those for housing benefit (HB). If you are a working-age applicant in England, check your local authority's CTR scheme for the rules for students. If you are not entitled for CTR because of this rule but your partner is not a student s/he may qualify for CTR instead.



The amount of main CTR you get may depend on:

- whether you live in England, Wales or Scotland; *and*
- whether the pension-age or working-age rules apply to you (see p138 and p139); *and*
- your 'maximum CTR' under your local scheme (see p145); *and*
- your 'applicable amount' (see p148). This is made up of personal allowances, as well as premiums and components for which you qualify; *and*
- how much income and capital you and your partner have (see p154 and p163); *and*
- how many people live with you in the dwelling, their circumstances and income.

If you meet the qualifying conditions for CTR and get the guarantee credit of PC, your main CTR is equal to your maximum CTR. You do not need to work out your applicable amount, income or capital. In England, the rules for working-age applicants vary considerably. Check the rules in your area. In Wales, local authorities may vary some, very limited, aspects of the calculation.

## How to calculate main council tax reduction

Your entitlement to main CTR is worked out as follows.

**Step one:** calculate your 'maximum CTR' (see p145). If you or your partner get the guarantee credit of PC, you do not need to follow any further steps – provided you meet the other qualifying conditions, you are entitled to your maximum CTR. If neither you nor your partner get the guarantee credit of PC, follow the remaining steps.

**Step two:** calculate your applicable amount (see p148).

**Step three:** calculate your and your partner's income (see p154).

**Step four:** calculate your and your partner's capital (see p163). If it is over £16,000, you do not qualify for CTR.

**Note:** if you live in England, the rules for working-age applicants vary considerably (see p139). Check the rules in your area. In Wales, local authorities may vary some, very limited, aspects of the calculation.

## Income less than or equal to your applicable amount

If you live in Scotland or Wales, or if the pension-age rules apply to you and you live in England, you are entitled to CTR equal to your 'maximum CTR' if your weekly income is equal to, or less than, your applicable amount and you meet the other qualifying conditions for main CTR (see p142).

If the pension-age rules apply to you and you or your partner get the guarantee credit of PC, all of your income and capital are disregarded and so your income is always less than your applicable amount.

If you get income support (IS), income-based jobseeker's allowance (JSA) or income-related employment and support allowance (ESA), all of your income is disregarded.<sup>26</sup>

If you live in England and the working-age rules apply to you, how your main CTR is calculated depends on your local authority's CTR scheme. In many areas, you qualify for your maximum CTR if your income is equal to or less than your applicable amount, but your maximum CTR often does not cover all of your council tax liability (see p139).

### Income is greater than your applicable amount

If you live in Scotland or Wales, or if you live in England and the pension-age rules apply to you, and your income is greater than your applicable amount, work out the difference between the two amounts. Your CTR equals your maximum CTR minus 20 per cent of the difference between your income and applicable amount (this reduction is known as the 'taper').

If you live in England and the working-age rules apply to you, how your main CTR is calculated depends on your local authority's CTR scheme. In many areas, a higher taper is applied by the local authority under its scheme. English local authorities may also set a lower taper, and some do.

#### Examples

Jim, 67, lives alone and has a council tax liability of £18.50 a week. His weekly income is £175.20 state pension and £51.97 private pension, totaling £227.17. His applicable amount in 2020/21 is £187.75 (his personal allowance). Jim does not qualify for any premiums.

Total income £227.17 minus £187.75 applicable amount = £39.42

20% of £39.42 excess income = £7.88

£18.50 – £7.88 = £10.62 CTR

Jim is entitled to £10.62 CTR on his weekly council tax liability.

Ana and Franek are pensioners aged in their 70s and they do not qualify for any premiums. Their applicable amount for 2020/21 is £280.85 and their occupational pensions total £307.65 a week. Their entitlement is worked out in the following way.

The difference between their income and their applicable amount is £307.65 – £280.85 = £26.80.

The taper is applied to this 'difference figure' at the rate of 20 pence in the pound  
£26.80 x 20% = £5.36.

£5.36 is deducted from Ana and Franek's maximum CTR of £22.63. This means that they will receive £17.27 CTR.

## Maximum council tax reduction

If you live in Scotland or Wales, or if the pension-age rules apply to you and you live in England, your maximum CTR is the council tax for the property, minus any council tax discount (see Chapter 7) or disability reduction (see Chapter 8) to which you are entitled, and minus any non-dependant deductions (see below).<sup>27</sup>

If you are jointly liable for council tax with one or more other people, other than your partner, when determining your maximum CTR the amount of council tax for the property, after any council tax discount or disability reduction has been deducted, is divided by the number of liable people (but students who would not be eligible for CTR are ignored).<sup>28</sup> Your maximum CTR is then based on your equal proportion of the council tax.

If you live in England and the working-age rules apply to you, your maximum CTR may be worked out differently. For example, it may be based on a percentage of your council tax liability or on the rate of council tax payable for a lower-band property. Check your local authority's CTR scheme for details.

### *Example*

Umar, 37, lives in a band B property in Bath and North East Somerset. He lives alone and receives a single occupier discount. His daily council tax bill is £2.82 with the discount deducted. However, in Bath and North East Somerset most working-age applicants are expected to pay at least 22 per cent of their council tax liability. Umar's maximum CTR is 78 per cent of £2.82: £2.20 a day.

## Non-dependant deductions

If other people normally live with you who are not part of your 'family' (see p135) and are not also liable for council tax (called 'non-dependants'), a set deduction may be made from the amount of your council tax when calculating your maximum CTR. It is assumed that the non-dependant makes a contribution towards your council tax, whether or not s/he does so in practice. Examples of non-dependants are adult sons or daughters, or older relatives who share your home. You may therefore need to ask your non-dependant(s) for a contribution. A person does not count as normally living with you if s/he has not been there long enough to regard your home as her/his normal home. A person can only be treated as living with you if s/he shares some accommodation with you.

Some people do not count as non-dependants. These include:<sup>29</sup>

- a member of your 'family' (see p135);
- a child or young person who is living with you but is not a member of your household (see p136);
- in most, but not all circumstances, a person who makes payments of rent on a commercial basis to you or your partner. **Note:** although no non-dependant

## Chapter 8: Council tax reduction schemes

### 5. Main council tax reduction

deduction can be made for him/her, the rent s/he pays can count as your income;

- certain live-in carers;
- in most, but not all circumstances, a person who is jointly and severally liable for council tax with you.

In some circumstances, a non-dependant deduction will not be made even if a non-dependant lives with you (see below).

#### **Example**

Alys, 72, lives in Wales and gets the guarantee credit of PC. Her non-dependent son, who gets contribution-based JSA, lives with her.

Weekly council tax liability for 2020/21 £23.36

Less non-dependant deductions £4.85

Maximum CTR £18.51

Alys is awarded £18.51 CTR and her son is expected to pay £4.85 a week towards her council tax liability.

### Exceptions to rules on non-dependant deductions

Even if a non-dependant lives with you, no deduction is made in the circumstances below. This is the case if you live in Scotland or Wales or if the pension-age rules apply to you and you live in England. If the working-age rules apply to you and you live in England, your local authority has discretion to vary the rules. Check the rules in your area.

No non-dependant deduction is made **if you or (in England and Scotland) your partner** are:<sup>30</sup>

- getting attendance allowance (AA);
- getting the care component of disability living allowance (DLA);
- getting the daily living component of personal independence allowance (PIP);
- getting an armed forces independence payment;
- blind, severely sight impaired, partially sighted, or treated as such (this also applies in Wales if your partner meets this condition).

**Note:** if you live in Wales and you have a partner who is getting one of the above benefits but you do not, get advice about whether you would be better off if your partner is the CTR applicant.

No deduction is made **for a non-dependant who**:<sup>31</sup>

- although s/he resides with you, has her/his normal home elsewhere (see p77 and p136); *or*
- is on universal credit (UC) and does not have any earned income; *or*
- is on IS, PC, income-based JSA or income-related ESA (in Wales this only applies if s/he is not in the work-related activity group); *or*



- is receiving a training allowance paid for doing youth training; *or*
- is a full-time student; *or*
- has been in hospital for more than 52 weeks. Separate stays which are not more than 28 days apart are added together when calculating the 52 weeks; *or*
- is a member of the armed forces or reserve forces and is absent on operations (this only applies in England and Scotland); *or*
- is disregarded for the purposes of a council tax discount (see p106).

### Amount of non-dependant deduction

The amount of the non-dependant deduction is set out in regulations. In England, your local authority may choose to set different amounts in its scheme for working-age applicants.<sup>32</sup>

#### England

Deduction 2020/21

Deduction 2021/22

If the non-dependant is:

Working 16 hours a week or more with an average weekly gross income of:

Below £217.00	£4.05	£4.05
£217.00 to £376.99	£8.25	£8.30
£377.00 to £468.99	£10.35	£10.40
£469.00 or above	£12.40	£12.45
Not working or working less than 16 hours a week	£4.05	£4.05

#### Wales

Deduction 2020/21

Deduction 2021/22

If the non-dependant is:

Working 16 hours a week or more with an average weekly gross income of:

Below £217.00	£4.85	£5.10
£217.00 to £376.99	£9.75	£10.20
£377.00 to £468.99	£12.25	£12.85
£469.00 or above	£14.65	£15.35
Not working or working less than 16 hours a week	£4.85	£5.10

#### Scotland

Deduction 2020/21

Deduction 2021/22

If the non-dependant is:

Working 16 hours a week or more with an average weekly gross income of:

Below £213.00	£4.25	£4.30
£213 to £369.99	£8.45	£8.50
£370.00 to £457.99	£10.70	£10.80
£458.00 or above	£12.80	£12.90
Not working or working less than 16 hours a week	£4.25	£4.30

Certain amounts may be disregarded when calculating the income of a non-dependant – eg, AA, DLA, PIP and armed forces independence payment and certain charitable funds (eg, to compensate for medical injuries and acts of terror) are disregarded from the non-dependant's weekly gross income.<sup>33</sup>

If you have a non-dependant couple living with you, only one deduction is made for them both although their combined income, and the circumstances of the member that would give the highest deduction, determine the rate of the deduction made. For example, if one member of the couple is working less than 16 hours or not working at all and the other is working 16 hours or more the deduction that applies is that for someone working 16 hours a week or more on the basis of their combined income.

If you have joint liability for the council tax with at least one other person who is not your partner, the amount of the deduction is divided equally between you.

**Note:** if you live in England and the working-age rules apply to you, check the rules in your area for details of any non-dependant deductions that are made.

#### Example

Wendy, 70, is single and claims the guarantee credit of PC. She lives alone in a band D property in England. Her son, Ben, comes to live with her. He works 30 hours a week and has a gross income of £410 a week. Her CTR for 2020/21 calculation is:

Before Ben moves in:

Weekly council tax	£28.88
Minus 25 per cent single occupier discount	£7.22
Net liability	£21.66
Weekly CTR	£21.66

So Wendy does not have to pay any council tax

After Ben moves in:

Weekly council tax	£28.88
No single occupier discount so:	
Net liability	£28.88
Minus non-dependant deduction	£10.35
Maximum CTR	£18.53

So Wendy is required to pay £10.35 council tax

Shortly after Ben moved in, however, Wendy was awarded AA. In consequence, the non-dependant deduction stopped. She then received CTR on the full weekly liability of £28.88.

## Applicable amounts

Main CTR is usually calculated by comparing your income to your applicable amount, a notional figure you are expected to live on. This will always be the case in Scotland and Wales and, if the pension-age rules apply to you, in England. If you live in England and the working-age rules apply to you, check your local

authority's CTR scheme; although most local authorities in England use an applicable amount when assessing whether working-age applicants qualify for main CTR, there is no requirement that they must do so or that the rules described below must be used.

In Scotland and Wales, if you or your partner get UC, your applicable amount is your 'maximum UC' multiplied by 12 and divided by 52 to give a weekly figure. In Scotland, in the tax year 2020/21 for each dependant child or young person in your family £17.07 is added to this weekly figure plus an additional £54.32 for any child who is not included in your maximum UC because of the 'two-child limit'.<sup>34</sup> In 2021/22, these figures are increased to £17.15 and £54.60 respectively.

If you do not get UC, your applicable amount is made up of:<sup>35</sup>

- a personal allowance based on whether you are single or part of a couple; *and*
- extra personal allowances for at least the first two dependent children you are responsible for; *and*
- any 'premiums' or 'components' which you or other members of your family (see p135) qualify for because of your circumstances, or the benefits you receive; *and*
- in Scotland and Wales in some circumstances, a transitional addition. This might be included if you or your partner were getting incapacity benefit, severe disablement allowance or IS and were transferred onto contributory ESA and the working-age rules apply to you.<sup>36</sup>

This table outlines the most common qualifying circumstances. See the table on pp152–53 for the amounts of the allowances, premiums and components.

### ***Summary of qualifying conditions for personal allowances, components and premiums***

#### ***Allowance, component or premium***

Personal allowance	Awarded for you and your partner, if you have one. The amount depends on your age.
Personal allowance (child or young person)	Awarded for each child or young person that you or your partner have responsibility for. In England, from 1 April 2018 you only get personal allowances for a maximum of two children or young people, unless you are entitled to child tax credit (CTC) for the extra child(ren) or, in some circumstances, you have been getting an allowance for the third or subsequent child within your applicable amount for CTR since before that date. <sup>37</sup>
Work-related activity component*	Awarded if either you or your partner: <ul style="list-style-type: none"> <li>– have claimed ESA; <i>and</i></li> <li>– the assessment phase has ended; <i>and</i></li> <li>– you have limited capability for work under the work capability assessment.</li> </ul> It is not necessary for you to be getting ESA to qualify.

Support component*	<p>Awarded if either you or your partner:</p> <ul style="list-style-type: none"> <li>– have claimed ESA; <i>and</i></li> <li>– the assessment phase has ended (or you satisfy the conditions for qualifying for the support component before it has ended); <i>and</i></li> <li>– you have limited capability for work-related activity under the work capability assessment.</li> </ul> <p>It is not necessary for you to be getting ESA to qualify.</p>
Family premium	<p>Awarded if your application includes a personal allowance for a child or a young person. <b>Note:</b> in England and Scotland, to qualify for a family premium you must have had a child or young person included in your CTR award since 30 April 2016 and have not made a new CTR application since that date.</p>
Disability premium	<p>Awarded if you are:</p> <ul style="list-style-type: none"> <li>– a working-age applicant; <i>and</i></li> <li>– not assessed or treated as having limited capability for work; <i>and</i></li> <li>– you, or your partner, are: <ul style="list-style-type: none"> <li>– ‘long-term sick’ since before 27 October 2008; <i>or</i></li> <li>– getting DLA, PIP, the disability or severe disability element of working tax credit (WTC) or another specified disability benefit.</li> </ul> </li> </ul> <p>For a full list of disability benefits, the meaning of limited capability for work and the transitional rules which allow you to keep the premium after transferring to ESA, see CPAG’s <i>Welfare Benefits and Tax Credits Handbook</i>.</p>
Disabled child premium	<p>Awarded for each child or young person you are responsible for who gets DLA, PIP or is (or has recently ceased to be) registered blind or severely sight impaired.</p>



Enhanced disability premium (sometimes called the 'disability income guarantee')

Awarded if you are a working-age applicant, you or your partner (provided s/he is below pension age):

- get the enhanced rate of the daily living component of PIP; or
- get the highest rate of the care component of DLA; or
- get armed forces independence payment; or
- if you are the CTR applicant, and you have limited capability for work-related activity (ie, in the 'support group').

This premium is awarded at a single or couple rate. Only one member of the couple needs to qualify in order for you to be awarded the couple rate.

If you are a pension-age or working-age applicant an enhanced disability premium is awarded (at the single rate) for each child or young person you are responsible for who receives PIP or DLA at the rates listed above, or armed forces independence payment.

Severe disability premium\*\*

If you are **single**, this premium is awarded if:

- you get one of the following benefits: daily living component of PIP; middle or highest rate of the care component of DLA; AA; or an equivalent benefit (see CPAG's *Welfare Benefits and Tax Credits Handbook*); and
- you do not have a non-dependant living with you (see CPAG's *Welfare Benefits and Tax Credits Handbook* for the exceptions to this rule); and
- no one is paid carer's allowance (CA) or the carer element of UC for looking after you.

For **couples**, the rules are more complicated. If both of you satisfy all three conditions above, you are awarded two premiums. If one of you satisfies all three conditions and the other satisfies the first two, you are awarded one premium. If you, as the applicant, satisfy all three conditions and your partner does not but is registered blind or severely sight impaired, you qualify for one premium. If this applies to you and your partner is the applicant, consider changing who makes the application.

Carer premium\*\*

Awarded if you or your partner are entitled to CA, or were entitled to it during the last eight weeks.

\*A work-related activity or support component can only be included in your applicable amount if the working-age rules apply to you. Only one of these components can be awarded. If you and your partner both qualify, but for different components, your applicable amount only includes the component which the CTR applicant qualifies for. If the applicant qualifies for the work-related activity component, you should consider swapping who is the applicant. You cannot get either of these components if a disability premium is included in your applicable amount.

**\*\***One of the conditions of entitlement to the severe disability premium is that no one receives CA in respect of you. If a carer claims, and **is paid**, CA, the disabled person for whom s/he cares could lose entitlement to the severe disability premium. Always consider who will be 'better off' in this situation and seek advice if necessary.

See CPAG's *Welfare Benefits and Tax Credits Handbook* for more information about applicable amounts. Normally, the rules for calculating applicable amounts for CTR are the same as those used in calculating HB.

**Applicable amounts for 2020/21<sup>38</sup>**

<b>Personal allowances</b>		<b>England*</b>	<b>Wales</b>	<b>Scotland</b>
<b>Working-age rules</b>		–		
Single	Under 25	–	£62.75	£58.90
	Under 25 (on main phase ESA)	–	£79.20	£74.35
	25 or over	–	£79.20	£74.35
Lone parent	18 or over	–	£79.20	£74.35
Couple	One or both 18 or over		£124.45	£116.80
<b>Pension-age rules</b>				
Single	Pension-age or over	£187.75	£187.80	£187.75
Couple	One or both pension-age or over	£280.85	£280.85	£280.85
<b>Working- and pension-age rules</b>				
Dependent child/ young person	Under 20	£68.27	£66.90	£85.34
<b>Components</b>		–		
Work-related activity		–	£29.35	£29.55
Support			£39.20	£39.20
<b>Premiums</b>				
Carer		–£37.50	£37.50	£37.50
Disability	Single	–	£34.95	£34.95
	Couple		£49.80	£49.80
Disabled child		–£65.52	£65.52	£65.52
Enhanced disability	Single	–	£17.10	£17.10
	Couple		£24.50	£24.50
	Child	£26.60	£26.60	£26.60
Severe disability	One qualifies	£66.95	£66.95	£66.95
	Two qualify	£133.90	£133.90	£133.90
Family**	Ordinary rate	£17.45	£17.45	£17.60
	Some lone parents	£22.20	£22.20	£22.20

**Applicable amounts for 2021/22<sup>39</sup>**

<i>Personal allowances</i>		<i>England*</i>	<i>Wales</i>	<i>Scotland</i>
<b>Working-age rules</b>		–		
Single	Under 25	–	£63.05	£59.20
	Under 25 (on main phase ESA)	–	£79.60	£74.70
	25 or over	–	£79.60	£74.70
Lone parent	18 or over	–	£79.60	£74.70
Couple	One or both 18 or over		£125.05	£117.40
<b>Pension-age rules</b>				
Single	Pension-age or over		£191.15	£191.15
	In England, reached pension age before 1 April 2021	£191.15		
	In England, reached pension age on or after 1 April 2021	£177.10		
Couple	One or both pension-age or over		££286.05	£286.05
	In England, one or both reached pension age before 1 April 2021	£286.05		
	In England, both reached pension age on or after 1 April 2021	£270.30		
<b>Working- and pension-age rules</b>				
Dependent child/ young person	Under 20	£68.60	£66.90	£85.75
<b>Components</b>		–		
Work-related activity		–	£29.70	£29.70
Support			£39.40	£39.40
<b>Premiums</b>				
Carer		–£37.70	£37.70	£37.70
Disability	Single	–	£35.10	£35.10
	Couple		£50.05	£50.05
Disabled child		–£65.94	£65.94	£65.94
Enhanced disability	Single	–	£17.20	£17.20
	Couple		£24.60	£24.60
	Child	£26.67	£26.67	£26.67
Severe disability	One qualifies	£67.30	£67.30	£67.30
	Two qualify	£134.60	£134.60	£134.60
Family**	Ordinary rate	£17.65	£17.45	£17.65
	Some lone parents	£22.20	£22.20	£22.20

\* In England, there is no requirement that local authorities use an applicable amount to determine a working-age applicant's entitlement to CTR. Check your local authority's CTR scheme for how your entitlement is calculated.

\*\*In England and Scotland, a family premium is not included in new applications from 1 May 2016.

In calculating your entitlement to CTR, the local authority will compare your applicable amount to your income.

## Income

Your income is calculated on a weekly basis.<sup>40</sup> The local authority includes earned and unearned income which you and you partner have. This includes:

- wages from employment; *and*
- earnings from self-employment; *and*
- some social security benefits; *and*
- payments from a trust or a charity.

'Tariff income' is also included. This is the income you are deemed to have from savings or other capital assets. Your actual income from these sources is ignored (see p162).

If the pension-age rules apply to you (see p138), the regulations lay down what counts as your income. Any monies not specified in the regulations are ignored when calculating your income. Some income is 'disregarded' either in full or in part.<sup>41</sup>

If the working-age rules apply to you and you live in Wales or Scotland, all of your and your partner's income is taken into account unless it is specifically 'disregarded'. Most English local authorities calculate the income of working-age applicants in this way too.

The rules for calculating your income, particularly from work or self-employment, are complex and only an overview is given in this chapter (see p158). See CPAG's *Welfare Benefits and Tax Credits Handbook* for further information. The rules for CTR often mirror those for HB.

## Income rules for pension-age council tax reduction

### If you get pension credit

If you or your partner get the **guarantee credit** of PC, all of your income and capital is disregarded and you qualify for main CTR which equals your maximum CTR (see p145).<sup>42</sup>

If you or your partner get the **savings credit** of PC but not the guarantee credit, the local authority calculates your income for CTR by using the DWP's assessment of your income for the savings credit of PC and adding the amount of the savings credit you have been awarded. However, if you have earnings, the local authority deducts any childcare disregard you qualify for (see p161) and it may 'disregard' more of your earned income under the rules on p159.



**If you do not get pension credit**

If the pension-age rules apply to you but neither you nor your partner get PC, your income is assessed by the local authority.

The following are defined as income for CTR but some income may be disregarded when calculating your entitlement:<sup>43</sup>

- earned income from employment or self-employment (see p158 for how this is calculated and p159 for how much is disregarded). **Note:** statutory sick pay (SSP) and statutory maternity/adoption/paternity/shared parental/parental bereavement pay are treated as earnings;
- WTC. (CTC is disregarded in full.) If deductions are being made from your tax credits to recover an overpayment, the amount counted towards income is the amount you are paid after deductions;
- retirement pensions;
- income from annuities (the capital value of the annuity itself is ignored);
- war pensions. Any disability increases are disregarded in full; £10 of the war pension itself is also disregarded. In Wales, local authorities are given discretion to increase this disregard.<sup>44</sup> In England and Wales, check your council's policy;
- widow's pension and widowed parent's allowance (however, the first £15 of the latter is disregarded);
- certain other payments.

Some benefits and tax credits are not counted as income. These include:

- HB;
- AA, DLA, PIP and armed forces independence payment;
- child benefit and guardian's allowance;
- CTC;
- bereavement support payment;
- social fund payments and, in Scotland, funeral support payment;
- Christmas bonus;
- carers allowance supplement;
- early years assistance.

Certain other income is disregarded, including the following.<sup>45</sup>

- £15 of any maintenance payments paid for you or your partner by someone to whom you or your partner are, or were, married or had/have a civil partnership with. In Wales, this only applies if a family premium is included in your applicable amount. Maintenance paid for a child or young person is disregarded in full.
- In certain circumstances, income from an annuity purchased with a loan secured on your home (a 'home income plan') which is used to pay the interest on that loan.
- Certain contributions paid to your son or daughter aged under 25 while in education.

- Payments from a discretionary trust. However, if these are used to pay essential bills, there is a weekly limit on the amount of the disregard.
- Compensation for personal injury. In some cases, this extends to payments to compensate for 'accident...or disease'.<sup>46</sup>
- The first £20 of income from a tenant or boarder who shares your premises is always disregarded. If you provide board and lodgings, 50 per cent of the remaining income is disregarded as well.

For more details, see CPAG's *Welfare Benefits and Tax Credits Handbook* (the income rules for pension-age CTR mirror the pension-age HB rules). **Note:** the disregards for maintenance and contributions to students listed above are subject to an overall limit of £20.

### Income rules for working-age applicants

In Wales and Scotland, all of your income is counted unless it is specifically disregarded. If you get IS, income-based JSA or income-related ESA, all of your income and capital are disregarded and you are entitled to your maximum CTR (see p145).

If you live in Wales or Scotland and either you get UC, or you and your partner jointly get UC, your local authority usually uses the DWP's assessment of your income and capital, to which it adds your UC entitlement, to calculate your CTR. Any other income is disregarded.<sup>47</sup> In Scotland, your local authority can estimate an average where your UC and other payments fluctuate from one assessed income period to another and, if your income for UC includes the one-off bonus of up to £500 which was awarded to health and social care staff as part of the Scottish government's COVID-19 support package, this payment is deducted when calculating your income for CTR.

In all other cases, the local authority makes its own assessment of your income. See p158 for how your earned income is calculated, and below for the rules about income other than earnings. The rules set out below apply throughout Scotland and, with minor variations, which are indicated, in Wales. Local authorities in England have discretion to assess income for working-age applicants differently. Check the rules in your area. Although most local authorities in England follow many of the rules described below when assessing your income, there is no requirement that they must do so.

### Benefits and tax credits

The following benefits are disregarded **in full**:<sup>48</sup>

- HB;
- DLA, PIP, AA and constant attendance allowance paid with industrial injuries benefit;
- armed forces independence payment;
- child benefit and guardian's allowance;

- social fund payments and, in Scotland, funeral support payment;
- Christmas bonus;
- bereavement support payment is disregarded as income, and the initial lump sum payment is ignored as capital for 52 weeks from the date of receipt;
- in Scotland, carer's allowance supplement, early years assistance and young carer grant;
- constant attendance allowance or mobility supplement paid with a war pension. In Scotland, the whole of the war pension is disregarded.

There are **partial disregards** of the following benefits:

- the first £15 of a widowed parent's allowance is disregarded;
- if deductions are being made from your tax credits to recover an overpayment from a previous tax year, the amount counted towards your income is the amount of WTC or CTC awarded less the amount of that deduction;<sup>49</sup>
- the first £10 of a war disablement, war widow's or war widower's pension. However, local authorities in England and Wales have discretion to disregard more.

### Other income

A number of other types of unearned income are disregarded.<sup>50</sup> Common examples include the following.

- Maintenance payments for children included in your family are disregarded in full, provided they are made by a 'liable relative'. A liable relative is the child's parent or step-parent or someone whom it is reasonable to treat as the child's father because he is making payments. £15 of maintenance payments paid for you by your former partner, or for your partner by her/his former partner, can be disregarded. In Wales, this applies only if you are entitled to a family premium.<sup>51</sup>
- Compensation for personal injury. In some cases, this extends to payments to compensate for 'accident... or disease'.
- The first £20 of income from a tenant or boarder who shares your premises is always disregarded. If you provide board and lodgings, 50 per cent of the remaining income is disregarded as well.
- If you let property other than your own home, the capital value of which is disregarded, any rent used to pay the mortgage payments, council tax and water charges on the property are disregarded for the period covered by the rent, but the remaining rent you receive counts as income, whether or not you have any other letting costs.
- If you own property other than the home you live in and let it out, and its capital value is *not* disregarded, all letting costs can be deducted and the net rent counts as capital, not as income.<sup>52</sup> However, you will still be deemed to receive 'tariff income' on the capital value of the property. The capital value is the property's market or surrender value minus 10 per cent if there would be

costs involved in the sale, and minus any debts secured on it, such as a mortgage.<sup>53</sup> In most cases, the capital value of the property itself is likely to exceed £16,000 (or your local authority's capital limit, if that is lower) and so you would not be entitled to any CTR. In some circumstances (eg, if you have a sitting tenant or there is 'planning blight'), you may be able to argue that the likely resale value is low.

- Any regular voluntary payments from charities or individuals (such as friends and family) are disregarded. One-off or irregular payments count as capital.
- Certain payments from public bodies, including local authority welfare provision, discretionary housing payments, social services payments and payments from trusts set up by central government to compensate the victims of medical accidents and disasters, are also disregarded.

For more details, see CPAG's *Welfare Benefits and Tax Credits Handbook* (the rules for CTR usually mirror the HB rules in this regard). **Note:** the disregards for maintenance and bereavement payments listed above are subject to an overall limit of £20.

### Earned income

The rules below apply to pension-age applicants in England, Wales and Scotland and to working-age applicants in Wales and Scotland. English local authorities can set their own rules for working-age applicants but they are often very similar. Earnings are income from employment, self-employment or any office or position you hold. This includes all bonuses and commissions, payments in lieu of notice where employment ends, holiday pay and retainers. If you live in Scotland or if the working-age rules apply to you and you live in Wales, holiday pay which is paid more than four weeks after your employment ends is not counted as earnings. SSP and statutory maternity/adoption/paternity/shared parental/parental bereavement pay are also treated as earnings.<sup>54</sup>

Average weekly earnings from self-employment for pension-age applicants are based on either a yearly amount if your business is established or a different period if you have recently started your business. If there is a change in the pattern of the business, the period can be adjusted to provide the weekly amount which most accurately reflects your income. If the working-age rules apply to you and you live in Scotland or Wales, your earnings from self-employment are calculated over a period that allows an accurate assessment of your weekly income, but the length of the period must not be more than 52 weeks.<sup>55</sup>

### Expenses counted as earnings

Any expenses you receive that are not wholly incurred for the performance of a job, including travelling expenses between your home and place of employment, count as income.



### Amounts not included as earnings from employment

The following amounts are *not* included as income from employment for CTR purposes:<sup>56</sup>

- any payment in kind – eg, a free meal;
- payments in respect of expenses wholly, exclusively and necessarily incurred in the performance of your job or employment;
- redundancy payments;
- occupational pensions;
- if you are a pension-age applicant, any lump-sum payment made under the Iron and Steel Employees Re-adaptation Benefits Scheme;
- if you are a pension-age applicant, compensation awarded by an employment tribunal for unfair dismissal or unlawful discrimination. If you are a working-age applicant living in Scotland or Wales such compensation may count as earnings;
- any payment of expenses arising from being involved with a service user group – eg, a group consulted by a health board or public authority;
- in Scotland, a one-off bonus of up to £500 which was awarded to health and social care staff as part of the Scottish government's COVID-19 support package;
- some non-cash vouchers.

Your earnings are considered net of tax and national insurance (NI).

### Sums disregarded from earnings

The following amounts may be disregarded from earnings. The highest disregard for which you qualify is used, plus the £17.10 (or in Scotland until 4 April 2021, £37.10) disregard if you qualify for it.<sup>57</sup> If you and your partner both work, the disregard is normally applied to your combined earnings. The following table lists the disregards which apply to pension-age applicants in England, Wales and Scotland. They also apply to working-age applicants in Wales and Scotland. Local authorities in England have discretion to use higher or lower disregards for working-age applicants or not to apply a disregard at all – check the rules in your area.

£25 disregard	You are a lone parent (unless claiming IS, income-based JSA or income-related ESA when all of your earnings are disregarded).
£20 disregard	The working-age CTR rules apply to you and you or your partner qualify for a disability premium, severe disability premium, carer premium or the work-related activity or support component, or if you live in Wales and are in the work-related activity group. You or your partner are employed as a part-time firefighter, part-time lifeboat crew, auxiliary coastguard or a member of any territorial or reserve force.

The pension-age CTR rules apply to you and you or your partner get main phase ESA, long-term incapacity benefit (IB), severe disablement allowance (SDA), AA, DLA, PIP, armed forces independence payment, a mobility supplement, the disabled worker or severe disability element of WTC, or are registered as blind or severely sight impaired.

The pension-age CTR rules apply to you and you or your partner have limited capability for work or limited capability for work-related activity and either the assessment phase has ended or you qualify for the support component during the assessment phase.

**£17.10\* disregard** You or your partner get the 30-hour element of WTC.

You or your partner are aged at least 25 and work 30 hours a week or more on average.

You or your partner work 16 hours a week or more on average and either your family for CTR purposes includes a child or young person or, if you live in Wales, you qualify for the family premium.

The working-age rules apply to you, and either you work 16 hours a week or more on average and qualify for the disability premium, work-related activity component or support component or, if you live in Wales, are in the work-related activity group, or your partner satisfies these conditions. **Note:** like the childcare disregard (see p161), this disregard can be applied in full or part to your WTC if your earnings are less than the disregards you qualify for.

The pension-age rules apply to you and either you work 16 hours a week or more on average and get main phase ESA, long-term IB, SDA, AA, DLA, PIP, armed forces independence payment, a mobility supplement, or the disabled worker or severe disability element of WTC or your partner satisfies these conditions.

You are a lone parent and work 16 hours a week or more on average.

**£10 disregard** None of the above apply and you are a member of a couple.

**£5 disregard** None of the above apply and you are single.

\* In Scotland this disregard is £37.10 until 4 April 2021 and, unless this date is extended, is £17.10 from 5 April 2021.

#### **Note:**

- If you are doing 'permitted work' while claiming ESA (or NI credits on the basis of limited capability for work), all of your earnings from permitted work are disregarded.
- If the working-age rules apply to you and you qualify for a carer premium or work as a firefighter, a member of a lifeboat crew, an auxilliary coastguard or member of territorial or reserve force, but your earnings are less than £20, in some circumstances the remaining disregard or some of it, can be deducted from earnings of your partner.

- If the pension-age rules apply to you, in some circumstances you may also qualify for a £20 disregard if, before you reached pension age, you or your partner had £20 of your earnings disregarded for HB or CTR.

For further details of the disregards and for an explanation of ‘permitted work’ and ‘main phase ESA’, see CPAG’s *Welfare Benefits and Tax Credits Handbook*. The rules on disregarded earnings for CTR are normally the same as the rules for HB.

## Childcare disregard

In some circumstances the amount you pay for certain kinds of childcare can also be disregarded from your earnings, subject to a weekly maximum. If your eligible childcare costs are greater than the remaining earned income, the remainder can be disregarded from any WTC you receive.

### What childcare costs are eligible and who qualifies

Eligible childcare costs are any that you pay to a registered childcare provider, an after school club or another provider specified in the regulations for caring for a child who is part of your CTR ‘family’ (see p135).<sup>58</sup> To be eligible, you must be:

- a lone parent working 16 hours or more a week; *or*
- a member of a couple, both of whom work 16 hours a week or more: *or*
- a member of a couple, one of whom works 16 hours a week or more, provided that the other partner is:
  - incapacitated – eg, s/he is aged over 80 or s/he receives main phase ESA, AA, DLA, PIP, armed forces independence payment, SDA, a disability premium, or for a period of at least 28 weeks s/he has had limited capability for work or incapacity for work; *or*
  - a hospital inpatient; *or*
  - in prison.

In some circumstances, you can be treated as working 16 hours a week – eg, for up to 28 weeks if you are getting SSP or ESA and were working at least 16 hours a week immediately before.

You can get a childcare disregard up until the Sunday before the first Monday in September following the child’s 15th birthday, or following the child’s 16th birthday if the child is disabled. Circumstances when a child is considered disabled include if s/he gets the care component of DLA (in Scotland either component of DLA counts), the daily living component of PIP (in Scotland, either component of PIP counts) or is registered severely sight impaired or blind.

### Amount of childcare costs that can be disregarded

If you live in England, Wales or Scotland and the pension-age rules apply to you, or if you are a working-age applicant in Wales or Scotland, your eligible childcare costs can be disregarded up to the following weekly maximums:<sup>59</sup>

- £175 for one child;
- £300 for two or more children.

If you are a working-age applicant in England, there is no requirement for your authority to disregard any amount for childcare costs.

### Tariff income from capital

When calculating your income, your local authority includes a notional figure for the income which you are 'deemed' to derive from any capital you and your partner have that is not disregarded. This 'tariff income' is worked out in the following way.<sup>60</sup>

- If you are a pensioner: the first £10,000 of your capital is ignored and you are assumed to earn £1 from each £500 of capital or part of £500 you have above £10,000.
- If you are a working-age applicant in Wales or Scotland, the first £6,000 of your capital is ignored and you are assumed to earn £1 for each £250 of capital or part of £250 you have above £6,000. In England, any capital limits and tariff income rules are set by your local authority.

### Calculating weekly income

All income figures are calculated on a weekly basis, so your earnings and other income have to be converted into a weekly amount if necessary.<sup>61</sup>

- In a case where the payment is for a calendar month, multiply the amount of the payment by 12 and divide the total by 52. If you are on UC, your local authority will use the DWP's assessment of your income and use this method to convert this to a weekly figure.
- In a case where the payment is for three months, multiply the amount of the payment by four and divide the total by 52.
- In a case where the payment is for a year, divide the amount of the payment by 52.
- In any other case, divide the amount of the payment by the number of days in the period in respect of which it is made and multiply the result by seven.

#### Example

Cassie and Themba live in Wales and both work. They are paid £146.40 tax credits every Tuesday, including the childcare element. Their childcare costs are £48 a week for an after-school scheme. Themba is paid monthly. He takes home £1,081 after tax and NI. Cassie, who works shifts, is paid weekly. She takes home £143.20 most weeks, and takes home £39.70 extra one week in four when she works nights. Cassie is paid £140 child benefit every four weeks. Their weekly income is as follows.

Tax credits	£146.40
Themba's wages ( $£1,081 \times 12 = £12,972 \div 52$ )	£249.46



Cassie's wages	averaged over a four week period ( $£143.20 \times 4 + £39.70 =$ $£612.50$ )	
	$(£612.50 \div 28 = £21.875 \times 7)$	£153.13
Child benefit	$(£140.00 \div 28 \times 7)$	£35.00
Total income		£583.99

£10 of their earnings is disregarded because they are a couple. Their childcare costs are deducted and a further £17.10 is disregarded because they both work over 16 hours a week and qualify for a family premium (see p159). So the actual income used to calculate their CTR is £518.89.

## Capital

If the pension-age rules apply to you, you cannot qualify for main CTR or, in Scotland, band E–H CTR, if your (and your partner's, if you have a partner) capital is over £16,000, unless you or your partner receive the guarantee credit of PC. The same capital limit applies to working-age applicants in Wales and Scotland.<sup>62</sup> Local authorities in England can set a different capital limit for working-age applicants.

Some kinds of capital are ignored, or are ignored for a certain period. All of your capital is ignored if:<sup>63</sup>

- you or your partner get the guarantee credit of PC (see p143); or
- you live in Wales or Scotland and you or your partner get IS, income-based JSA or income-related ESA. In England, whether this applies depends on the working-age rules in your area.

In Wales and Scotland, if you get UC or you jointly get UC with your partner, when calculating your CTR your local authority must use the amount of capital the DWP has determined you have for the UC claim.<sup>64</sup>

If your capital cannot accurately be determined, the local authority may estimate a figure.

## What counts as capital

The term 'capital' is not defined. In general, it means lump-sum or one-off payments rather than a series of payments – eg, it includes savings, property and statutory redundancy payments.

If you have two accounts with the same bank, one of which is in credit and the other is overdrawn, the amount of the overdraft should be deducted from the account in credit to determine the actual figure of capital.<sup>65</sup>

If you jointly own a capital asset with someone else under a 'joint tenancy' arrangement, you and the other owner(s) are treated as owning it in equal shares; if you own it as 'tenants in common', it is the value of your actual share that is counted.<sup>66</sup> See CPAG's *Welfare Benefits and Tax Credits Handbook* for further

information on the treatment of jointly owned capital. The rules are similar to those for housing benefit.

#### Disregarded capital

Some capital is disregarded for a fixed period, some indefinitely. Disregarded capital includes:<sup>67</sup>

- the value of any personal possessions;
- the value of the home you live in (but not more than one home);
- amounts paid under an insurance policy for loss or damage to your home and to your personal possessions, for one year;
- assets from a former business which are in the process of being disposed of;
- any premises acquired which you intend to occupy as your home within 26 weeks of the date of acquisition (or longer period if reasonable);
- any premises which you intend to occupy as your home but which need essential repairs or alterations to render them fit for such occupation, for a period of 26 weeks from the date you first take steps to carry out the repairs, or as long as is needed for them to be completed;
- any premises occupied in whole or in part by a relative who has reached pension age (see p138) or who is incapacitated;
- premises occupied by a former partner as her/his home, in specified circumstances;
- any case where you are taking 'reasonable steps' to dispose of an interest in capital – eg, selling your home to pay for care costs or entering sheltered accommodation, for 26 weeks or longer if reasonable;
- certain business assets.

Rules differentiate between capital in the UK and outside it. See CPAG's *Welfare Benefits and Tax Credits Handbook* for more information.

#### Notional capital

In certain circumstances, you may be treated as having capital that you do not actually have. You are treated as possessing capital of which you have deprived yourself for the purpose of securing entitlement to CTR or increasing the amount of CTR you receive.<sup>68</sup> Some local authorities have been known to decide that applicants have done this simply because their savings have been reduced prior to an application. However, for this rule to apply the local authority has to prove, on the balance of probabilities, that you deliberately got rid of capital in order to get or increase your entitlement to CTR.

The regulations specify for pension-age applicants, and you can argue it should also apply to you if you are a working-age applicant, that you should not be treated as depriving yourself of capital, if you dispose of it as a means of:<sup>69</sup>

- reducing or paying debts you owe; or

- purchasing goods or services, if the expenditure is reasonable in the circumstances.

If you are treated as having notional capital the amount of it is considered to reduce over time, by specified amounts. This is called the 'diminishing notional capital rule'.<sup>70</sup>

In England if the working-age rules apply to you, check your local authority's CTR scheme.

## 6. Alternative maximum council tax reduction ('second adult rebate')

In England and Scotland, 'alternative maximum council tax reduction', known as 'second adult rebate', is designed to help you if you share your home with anyone on a low income who does not share liability for council tax with you or pay rent to you (referred to as a 'second adult').<sup>71</sup> There is no second adult rebate in Wales.

Second adult rebate is an alternative type of council tax reduction (CTR) that can be received instead of, but not as well as, main CTR (or, in Scotland, band E–H CTR). When you apply for CTR, the local authority must assess your entitlement to each type and award whichever is the higher – sometimes referred to as the 'best buy'.<sup>72</sup>

You qualify for a second adult rebate if:<sup>73</sup>

- you live in Scotland or, if the pension-age rules apply to you (see p138), you live in England (if you live in England and the working-age rules apply to you, see below); *and*
- you meet the general rules which apply to all types of CTR, described on pp134–35; *and*
- you are the only person liable for the council tax on the home (with certain exceptions – see p74); *and*
- no one living in your home is liable to pay you rent; *and*
- you have one or more 'second adult(s)' living with you who are on a low income (see p167).

If you live in England and the working-age rules apply to you, whether you can get second adult rebate depends on your local authority's CTR scheme.

**Note:** second adult rebate is based on the circumstances of the 'second adult(s)' living with you. The whole of *your* income and capital is ignored.<sup>74</sup> Therefore, you can get second adult rebate even if you have a high income and/or capital worth more than £16,000, or if you are student who is liable to pay council tax.

## Chapter 8: Council tax reduction schemes

### 6. Alternative maximum council tax reduction ('second adult rebate')

#### **Example**

Priya owns her own home and earns £40,000 a year. She is liable for council tax of £1,125 a year after her single occupier discount, and her income is too high for her to qualify for main CTR. Priya's adult son, Zac, who receives income-related employment and support allowance (ESA), moves in with her. Priya loses her 25 per cent single person's discount and her council tax liability is now £1,500. Zac is a second adult. Priya is entitled to a second adult rebate.

## Who counts as a second adult

You must have at least one 'second adult' residing with you to qualify for second adult rebate. In practice, those classed as second adults would normally also be considered to be non-dependants (see p145).

## Who does not count as a second adult

Someone residing with you does not count as a second adult if s/he is:<sup>75</sup>

- aged under 18; *or*
- disregarded for council tax purposes (see p106); *or*
- your partner with whom you are jointly liable for council tax; *or*
- jointly liable to pay the council tax on the dwelling with you – eg, because s/he is a joint owner or tenant. Although you cannot get second adult rebate for her/him, s/he may be able to apply for main CTR for her/his own share of the bill.

#### **Examples**

Scott owns his home. His mother lives with him and gets the guarantee credit of pension credit (PC). Scott is liable for council tax and can apply for second adult rebate, as his mother is a second adult.

Ivana lives with her partner, who is a full-time student and is disregarded for the purpose of a council tax discount. Their 20-year-old daughter and 25-year-old son live with them. The daughter is unemployed and gets universal credit (UC). The son is in low-paid employment. Ivana may qualify for the second adult rebate, as the adult daughter and son are second adults.

Kendall is a lone parent who lives with her two children aged 10 and 14. She is not entitled to second adult rebate as there are no second adults in the dwelling. However, she is entitled to a single occupier discount.

**Note:** you cannot qualify for second adult rebate if a second adult who lives with you is liable to pay you rent for occupying your home.



## 6. Alternative maximum council tax reduction ('second adult rebate')

**Calculating second adult rebate**

The amount of second adult rebate you get is a percentage of your council tax liability after any disability reduction has been deducted. The percentage is based on the gross income of the second adult.<sup>76</sup> If there is more than one second adult, their combined gross income is used. Any income support (IS), income-based jobseeker's allowance (JSA), income-related ESA, or PC a second adult gets is not counted when calculating their income. If you are entitled to 100 per cent second adult rebate, any discount to which you are entitled is also deducted from your council tax before the second adult rebate is calculated.

If you are jointly liable for the council tax with someone who is not your partner, the amount of second adult rebate is divided by the number of people liable, and you get your equal share of it.

<i>Income of second adult(s)</i>	<i>Second adult rebate</i>
Second adult(s) on IS/income-based JSA/income-related ESA/PC	25 per cent
In Scotland, if the pension-age rules apply, second adult(s) on UC	25 per cent
Second adult(s) total gross weekly income:	
Below £215 in England or £209 in Scotland	15 per cent
£215–£278.99 in England or £209–£272.99 in Scotland	7.5 per cent
£279 and over in England or £273 and over in Scotland	Nil
Student dwellings:	
All occupiers are either students excluded from entitlement to main CTR (see below) or on IS/income-based JSA/income-related ESA/PC. At least one must be a student and at least one on IS/income-based JSA/income-related ESA/PC.	100 per cent

Someone counts as a student excluded from entitlement to main CTR if s/he would be excluded if s/he were under pension age (see p138).

Unless you qualify for a 100 per cent second adult rebate, the maximum second adult rebate you can get is always 25 per cent of your council tax liability, even if you would have received a 50 per cent council tax discount, or would have been exempt from council tax altogether, were it not for the presence of two or more second adults in your home.

Certain income of a second adult can be ignored. This includes any personal independence payment, disability living allowance or attendance allowance s/he receives.<sup>77</sup>

#### Examples

Harry is a student who lives alone in a home he owns, so he is exempt from paying council tax. His friend Marcus, who is on income-related ESA, comes to lodge with him, so Harry becomes liable for council tax. Harry applies for second adult rebate and gets second adult rebate of 100 per cent of his council tax liability. If, however, Marcus received the same amount of contributory ESA or UC, Harry would be likely to be eligible for only a 15 per cent second adult rebate.

Noel is the tenant of his flat. He is in a well-paid job so lets his friend Liam stay with him without charging him rent. Liam earns £190 a week. Noel's second adult rebate is 15 per cent of his council tax liability.

## 7. Band E–H council tax reduction: Scotland

From 1 April 2017, the Scottish government changed the formula for calculating council tax for properties in bands above D. The proportions used to calculate council tax for properties in bands E to H relative to band D increased (see p47). To compensate 'low- to middle-income households' affected by this change, the Scottish government introduced band E–H council tax reduction (CTR).

You qualify for band E–H CTR for your home if:<sup>78</sup>

- you meet the general conditions which apply to all CTR schemes detailed on pp134–35; *and*
- the property is in council tax band E, F, G or H; *and*
- unless you or your partner get the guarantee credit of pension credit (PC), you and your partner do not have capital of more than £16,000; *and*
- the amount of band E–H CTR you would qualify for is more than the amount of main CTR or second adult rebate you would qualify for (otherwise you get main CTR or second adult rebate instead).

**Note:** if you are a full-time student and the working-age rules apply to you, you cannot qualify for band E–H CTR unless you come within one of the groups of students excepted from this rule – eg, if you are a lone parent.<sup>79</sup> If you are not entitled for CTR because of this rule but your partner is not a student s/he may qualify for CTR instead.

### Calculating band E–H council tax reduction

To calculate your band E–H CTR, compare your income to one of two set figures:

- £479, if you are a lone parent with dependant children or a member of a couple;
- £321, if you are a single person.

If your income is equal to or less than either £479 or £321 a week (whichever applies to you), your band E–H CTR is equal to your maximum CTR for a band E–H property (see below).

If your income is more than either £479 or £321 a week (whichever applies), calculate the difference. Your band E–H CTR is calculated by deducting 20 per cent of the difference from your maximum CTR for a band E–H property (see below).

Your income and capital are assessed in the same way as for main CTR (see p154 and p163) and if you or your partner get the guarantee credit of PC, or if you get income support, income-based jobseeker's allowance or income-related employment and support allowance, you are treated as if you have no income as all as your income is disregarded (but in these situations your entitlement to main CTR is likely to be higher). See p156 for how your income is calculated if you or your partner get universal credit.

## **Maximum council tax reduction for band E–H property**

Follow these steps to calculate your weekly maximum CTR for band E–H CTR.

**Step one:** calculate your council tax liability without CTR. This is the annual council tax due on your property after deducting any discount or disability reduction you are entitled to from the council tax set for the property. If you are jointly liable for the council tax with someone who is not your partner, it will be your equal share of the council tax that is used.

**Step two:** divide the amount from step one by:

- 1.075 if your property is in council tax band E;
- 1.125 if your property is in council tax band F;
- 1.175 if your property is in council tax band G;
- 1.225 if your property is in council tax band H.

**Step three:** deduct the figure obtained in step two from the figure obtained in step one, divide the answer by the number of days in the tax year and multiply by 7 to get your weekly maximum CTR.

### **Example**

Tony and Ginny are in their fifties and live in a band G property in Aberdeen. Their council tax for 2020/21 is £2,697.21 a year. No one else lives with them and they are not entitled to any council tax discounts, which means their maximum CTR for a band E–H property is £7.70 a week. Their combined income after disregards is £507.80. This is £28.80 more than £479 so a 20 per cent taper is applied to this excess: £28.80 x 20 per cent = £5.76. Their entitlement to band E–H CTR is £1.94 a week (£100.88 a year).

As Tony and Ginny have provided full information about their income and other circumstances in support of their CTR application, the local authority would also compare their income against their applicable amount (see p148) and pay them under the main CTR scheme if this would result in a higher award.

## 8. Extended and continuing reductions

In some circumstances, your main council tax reduction (CTR), second adult rebate, or band E–H CTR can continue to be paid at the same rate for a period of four weeks after you or your partner stop getting certain benefits, either because you start work or your earnings or hours of work increase, or because you swap onto pension credit (PC). This applies to pension-age applicants in England, Wales and Scotland and also to working-age applicants in Wales and Scotland. If the working-age rules apply to you and you live in England, check your local authority's CTR scheme to see whether you can qualify for an extended reduction or continuing reduction.

### Extended reduction

If you are entitled to CTR, you may qualify for an 'extended reduction' if you or your partner start work, or your pay or hours of work increase (and the work or increase in pay or hours is expected to last at least five weeks) and as a result either:<sup>80</sup>

- your or your partner's entitlement to income support (IS), income-based jobseeker's allowance (JSA) or income-related employment and support allowance (ESA) ends, provided you or your partner have been getting one of those benefits (or a combination of them) for a continuous period of at least 26 weeks prior to the benefit ending; *or*
- your or your partner's entitlement to contributory ESA, incapacity benefit (IB) or severe disablement allowance (SDA) ends, provided you have been getting one of those benefits (or a combination of them) for a continuous period of at least 26 weeks prior to the benefit ending. You cannot qualify on this ground if you or your partner were getting IS, income-based JSA or income-related ESA in the week your contributory ESA, IB or SDA ended.

If you qualify, you can receive the same amount in CTR as you did before the work or increase in pay or hours started, for a period of four weeks, if this would be more than the amount of CTR for which you or your partner would qualify otherwise. Local authorities in Wales have discretion to increase the length of the extended reduction period.<sup>81</sup>

Contact your local authority to report the change in your circumstances and it will assess whether you are entitled to an extended reduction.

After the extended reduction period, you may still qualify for CTR but your entitlement is reassessed on the basis of your new circumstances.

### Continuing reduction on claiming pension credit

To avoid delays in reassessing your CTR when you move from IS, income-based JSA or income-related ESA onto PC, provided you otherwise continue to qualify



for CTR, you continue to receive it, normally at the same rate as before this happened, for a period of four weeks.<sup>82</sup> You qualify for a continuing reduction if:

- your partner has claimed PC and the DWP has certified this; *or*
- your IS, income-based JSA or income-related ESA ceased because you reached pension age (see p138). The DWP must certify this and that you are required to claim or have claimed PC (or are treated as having done so).

## 9. Applications, decisions and awards

You should apply for council tax reduction (CTR) as soon as you think you might be entitled.

If you are not eligible, you may still apply for a discretionary reduction (see p177).

### Making an application

An application for CTR may be made:<sup>83</sup>

- in writing on a properly completed application form. Forms are available from your local authority, or you may be able to download one from its website; *or*
- online (Scottish councils do not need to make this means available); *or*
- by telephone, if the local authority has published a number for this purpose.

A written application must be made to your local authority's 'designated office'. You must provide any information and evidence reasonably required. You can claim in some other written form (eg, by letter), as long as the written information and evidence you provide is sufficient. An application made on a form provided by a local authority is properly completed if it is completed in accordance with the instructions on the form, including providing information and evidence.<sup>84</sup> In England or Wales, in most cases you must provide your (and you partner's) national insurance (NI) number, or provide information to allow the local authority to trace your NI number, or you must apply for a NI number and provide evidence that you have done so and the information or evidence needed to allow a NI number to be allocated.<sup>85</sup>

Check with the local authority that your application has been received. If you are applying for CTR in writing, keep a copy of your application and proof of posting or receipt.

### Applying in advance

Unless you are living abroad, you can apply in advance if you think you are going to become eligible for CTR in the future – eg, because you know that you are going to have a drop in income or will become liable for the council tax.

If you are not yet liable for council tax but will become liable within eight weeks (in England or Scotland) or 13 weeks (in Wales), and you make an application for CTR at any time within those eight or, in Wales, 13 weeks, the local authority should treat your CTR application as made on the date your council tax liability starts.<sup>86</sup>

If the pension-age rules apply to you and you live in England, you can apply up to 17 weeks before you become eligible for CTR. In England or Scotland you can also apply up to 17 weeks in advance if you or your partner will reach pension age (see p138) within 17 weeks. If you live in Wales, or if the working-age rules apply to you and you live in England or Scotland, you can make an application up to 13 weeks before you become eligible for CTR.<sup>87</sup>

## **Providing further information**

Where possible, your application should be accompanied by all the information and evidence needed to assess it, but you should not delay your claim just because you do not have all the evidence ready to send. Even if you provide all the information required with your application, the local authority might ask you for further evidence or information. If the local authority requests further information, you must supply it within one month of a request being made, or such longer time as the local authority considers reasonable.<sup>88</sup>

If the local authority has made a decision which you think is wrong, you can appeal (see p176). If you think the local authority's request for information is unreasonable, you can also make a complaint (see p293).

## **Applications by couples**

If you are part of a couple (see p135), your application for CTR can be made by you or your partner, as agreed between yourselves. If you do not agree between yourselves, the local authority may choose who is the applicant.<sup>89</sup> In some cases, the amount of CTR to which you are entitled differs depending on who makes the application – eg, if you have limited capability for work-related activity but your partner does not, an enhanced disability premium is only included in your applicable amount if you are the applicant (see p151).

## **Amending and withdrawing applications**

You may amend your application any time before a decision has been made on it. This gives you an opportunity to include new information or changes in circumstances or to correct any errors. Any amendments are treated as if they were included in your original application.

You may withdraw your application at any time before a decision has been made. A notice of withdrawal has effect from when it is received by the local authority. Where you amend or withdraw your application by telephone, you may be required to confirm in writing.

## Notification of decisions

In England and Wales, your local authority must make its decision within 14 days, or as soon as reasonably practicable after that. It must notify you, and any other person affected, of the decision in writing.<sup>90</sup>

## When your entitlement begins and ends

In Scotland and for pensioners in England, the general rule is that your first day of entitlement to CTR is the Monday following the date your application is made, or the date on which your application is treated as having been made (see below).<sup>91</sup> If that is a Monday, your entitlement begins on the following Monday. In Wales, your first day of entitlement is the date your application for CTR is made or is treated as made.<sup>92</sup>

In Scotland and for pensioners in England, if you apply for CTR in the week you first become liable for council tax for the home in which you are resident, you are entitled from the day your liability begins.<sup>93</sup> This may arise, for example, if you stop being a student.

Your CTR application is made or treated as made on the first of the following dates:<sup>94</sup>

- if you apply for CTR within one month of you or your partner successfully claiming the guarantee credit of PC, UC, IS, income-based JSA or income-related ESA, on the day the entitlement to that benefit began; *or*
- if you or your partner are getting the guarantee credit of PC, UC, IS, income-based JSA or income-related ESA and you apply for CTR within a month of your liability for council tax starting, on the day your council tax liability began; *or*
- if your partner was getting CTR when you separated or when s/he died and you apply for CTR within one month, on the day you separated or the day your partner died; *or*
- if you returned a properly completed application form within a month of the form being issued to you by the local authority, the day the form was issued; *or*
- on the day your properly completed application form is received.

Provided you continue to qualify for CTR, your award continues indefinitely and you do not need to reapply every year. However, if your circumstances change and you no longer qualify for CTR, it normally ends on the Sunday on or after the change occurred if you live in England and the pension-age rules apply to you or if you live in Scotland. In Wales, your CTR ends on the date the change occurs.<sup>95</sup>

**Note:** if you stop claiming IS, income-based JSA or income-related ESA, and you continue to qualify for CTR, your entitlement to CTR can continue without your having to make a fresh application, but your new circumstances could affect the amount you get. You need to provide any evidence required by your local authority.

## **Backdating**

In some situations, your CTR application can be backdated. If you are a working-age applicant:

- in **England**, check your local authority's CTR scheme for details;
- in **Wales**, as a minimum your local authority must allow up to three months' backdating if you have continuous good cause for your late application. Local authorities are permitted to allow longer and may also set more generous criteria for backdating;<sup>96</sup>
- in **Scotland**, your application can be backdated for up to six months if you have continuous good cause for your late application.<sup>97</sup>

For more about what constitutes 'good cause', see CPAG's *Welfare Benefits and Tax Credits Handbook*.

If you are a **pensioner**, CTR can be backdated for up to three months from the date you applied, so long as you were entitled throughout. There is no need to show 'good cause'.<sup>98</sup> This can be extended where you have made a claim for the guarantee credit of PC and apply for CTR within one month of this claim being awarded, but your award of CTR cannot begin more than three months before your claim for PC was made.<sup>99</sup>

## **Reporting changes in circumstances**

It is your duty to report any change in your circumstances which you might reasonably be expected to know might affect your right to, or the amount of, CTR.<sup>100</sup> You, or a person acting on your behalf, must notify the authority of any changes between the making of an application and a decision being made on it. Similarly, changes must be reported after the decision is made, including at any time you are in receipt of a reduction.

### ***Examples of changes that you must inform the local authority about***

Whenever you have a change of address.

Whenever any person joins or leaves your household.

Whenever the income or capital of anyone in the property changes so as to affect your CTR.

Whenever there is a change in the amount of tax credits or benefits received.

Whenever anyone in the property starts or finishes employment.

Whenever there is a change of ownership of the property in which you live.

In **England and Wales**, you must report the change within 21 days of the change occurring or, if later, as soon as reasonably practicable after the change occurs.<sup>101</sup> In **Scotland**, there is no set time limit to report changes. Do this promptly to the office handling your application. You can do this in writing, or by telephone if



your local authority has published a number for that purpose. If your local authority authorises it, you can also report changes by electronic means, such as email or an online form. However, it is always best to report a change in writing and to keep a copy.

You may be able to report a birth or death using the 'Tell Us Once' service. Check with your local authority (at the register office) to see if it provides this service.

If you fail to report a change in circumstances, your CTR may be ended and you become liable to pay the tax for the period concerned. If you are considered to have deliberately acted falsely or dishonestly, you may also be guilty of an offence.

If you move to a new local authority area, report this change to your old authority and apply for CTR from your new local authority.

**Note:** whether a delay in reporting a change is reasonable depends on the circumstances. For example, if you have a mental health problem that makes it hard for you to deal with your finances, it may be reasonable that it takes you longer to report changes than it would otherwise. However, if you could get help from another person to report a change but do not do so, any delay is less likely to be considered reasonable.

## If you have been awarded too much council tax reduction

There can be no 'overpayment' of CTR, even if you have been awarded too much CTR for a past period, because CTR is not a 'payment' but a reduction in council tax liability. If your CTR award is reassessed and reduced, it will result in an equivalent increase in your council tax liability. In England or Wales, unless your local authority's CTR scheme stipulates a different way to deal with your CTR entitlement or council tax liability in such circumstances, your local authority will increase your council tax liability by reducing your CTR, even if the reason the original award was incorrect was because of an error on the part of the local authority. In this situation, you could apply for discretionary reduction (see p177) if you cannot afford to pay the increased council tax.

If you live in Scotland and you were awarded too much CTR for a past period (called an 'overentitlement'), any arrears of council tax which resulted from the adjustment of your CTR entitlement for that period cannot be recovered from you if:<sup>102</sup>

- the overentitlement resulted from a mistake by the local authority or someone acting on its behalf; *and*
- you did not cause or 'materially contribute to' the mistake; *and*
- you could not reasonably have been expected to realise that you were receiving too much CTR at the time the overentitlement arose or when you received any later notification of your entitlement.

## 10. If you disagree with a council tax reduction decision

### Challenging a decision about your council tax reduction

#### England and Wales

You have a right of appeal against decisions made by the local authority about your council tax reduction (CTR). Your local authority scheme should contain details of your right of appeal, and the decision notification the local authority issues you about your CTR award should explain how to appeal.<sup>103</sup>

You can appeal decisions about your entitlement to CTR or the amount of CTR awarded.<sup>104</sup> This includes decisions about your entitlement to, or the amount of, a discretionary reduction (see p177).<sup>105</sup>

Before you can appeal a decision, you must first write to the local authority to explain what you disagree with and why – eg, you disagree with the amount of CTR awarded because the council has established the wrong facts or did not apply the regulations properly. This may be referred to as a ‘notice of appeal’. The authority must consider the matters you have raised and inform you in writing either that it does not feel that your challenge is well founded, and give its reasons, or state the steps it will take to resolve the issue – eg, look at the matter again, or award the reduction to which you are entitled.<sup>106</sup>

- In **England**, because CTR and housing benefit (HB) are administered together, if you are challenging a decision that affects both benefits, it makes sense to write to the local authority within one month of the decision (the time limit to ask the authority to revise its HB decision). In other cases, it is advisable to do so within a month, or if a time limit is given in your local authority’s CTR scheme, within that time limit. However, as there is no time limit given in the legislation, if your local authority refuses to consider your notice of appeal on the grounds it is late, seek advice.
- In **Wales**, the time limit for submitting your notice of appeal is one month from the date of the decision or of the written explanation of that decision.<sup>107</sup>

If you are not satisfied with the response of the local authority, or if it fails to respond within two months, you may appeal to the Valuation Tribunal for England or the Valuation Tribunal for Wales. You should do this within a further two months (see Chapter 11).<sup>108</sup>

If you do not start your appeal within this time limit, unless there are reasons beyond your control which prevented you from doing so, the valuation tribunal may dismiss your appeal.<sup>109</sup>

In exceptional circumstances, the High Court may also consider applications for judicial review concerning the failure of local authorities to properly consider and review applications (see p314).<sup>110</sup>

## Scotland

If you disagree with your local authority's decision on your CTR application, you can request that the local authority review its decision. You must make the request for a review within two months of the date of the decision, stating what you disagree with and why.<sup>111</sup>

Within two months of receiving your request, the local authority must notify you in writing either of its new decision or that it is not changing its decision.<sup>112</sup>

If you are still dissatisfied with the local authority's decision following its review, you can apply for a further review by the Council Tax Reduction Review Panel (CTRRP). Your application for a further review should:<sup>113</sup>

- be made in writing; *and*
- include a copy of your CTR decision letter; *and*
- give your reasons for the request of the review; *and*
- be received within 42 days of the local authority's review decision notification.

An application form can be downloaded from [counciltaxreductionreview.scotland.gov.uk](http://counciltaxreductionreview.scotland.gov.uk).

A further review of a determination on an application is normally heard by one member of the panel. It is an oral hearing unless you, the local authority and the member of the panel undertaking the review agree that the review is to be dealt with by written representations.<sup>114</sup>

## Challenging the local authority's scheme

If you want to challenge the local authority's CTR scheme itself (eg, because you think the contents of the scheme or the process of adopting it is unlawful), you can only do so by way of judicial review.<sup>115</sup> For more information on judicial reviews, see p314.

## 11. Discretionary reductions

Each local authority in **England and Wales** has a discretionary power to reduce a council tax bill.<sup>116</sup>

Even if you are entitled to council tax reduction (CTR) under your local authority's CTR scheme, your local authority can still award you a discretionary reduction. Local authorities can reduce sums payable in individual cases to prevent financial hardship and in groups of cases<sup>117</sup> – eg, to victims of flooding or persons in receipt of particular benefits or in respect of personal circumstances such as pregnancy.

Councils have been given wide scope to reduce bills. The power to apply a discretionary reduction includes the power to reduce the bill to zero.<sup>118</sup> A reduction may be awarded to cover any liability regardless of when the liability

arose,<sup>119</sup> so a discretionary reduction can be used to clear arrears of council tax from an earlier year or years – ie, at any time before the CTR schemes came into force.<sup>120</sup>

Each local authority's CTR scheme must explain how a discretionary reduction can be applied for.<sup>121</sup> You should apply for a discretionary reduction in writing and provide supporting evidence. When making an application, it is advisable to include a full income and expenditure breakdown, together with that of any other household members.

#### **Meaning of financial hardship**

The term 'financial need' is not defined but it should be given a wide interpretation, in accordance with existing caselaw.

It has been held by the courts: 'To need is not the same as want. "Need" is a lack of what is essential for the ordinary business of living.'<sup>122</sup> Financial need may be distinguished from such terms as 'hardship' and 'poverty'. Poverty has been considered as usually involving 'extreme financial stringency such that the applicant has some difficulty in meeting the conventional necessities of life.'<sup>123</sup> Accordingly, the term 'financial need' can cover people not in a state described as poverty but who nonetheless may be, or who are, experiencing difficulty in meeting ordinary bills and household expenses in the course of the financial year unless support is given. The term 'financial need' is a lower threshold or test than poverty or hardship and may also include people who are, or who will be, in debt unless support is given. Note that a person is not required to be without any money or assets, with certain amounts and types of savings being allowed.

Although a local authority is likely to have a written policy on how applications are decided, it is expected to consider each case on its merits whatever its policy says and should act reasonably when deciding whether to grant a discretionary reduction. An important decision clarifying the scope and range of matters to be considered by a local authority when deciding whether to grant a reduction was decided by the president of the Valuation Tribunal for England in *SC and CW v East Riding of Yorkshire Council* (see p264).<sup>124</sup>

If you disagree with the council's decision on your application for a discretionary reduction, you can appeal against it (see p264).

## **Coronavirus hardship fund discount**

Local authorities in England have been allocated funds from the government's COVID-19 hardship fund to award hardship fund discounts. Although they are discretionary payments, the government's guidance states that it is strongly expected that a hardship fund discount should be awarded to you automatically if you have been entitled to working-age CTR in the tax year 2020/21 – ie, for any



period in that tax year, you do not have to qualify for CTR for the whole of the tax year.

If your council tax liability for 2020/21, after other discounts and CTR have been deducted, is:

- £150 or more, you should get a hardship fund discount of £150;
- less than £150, you should get a hardship fund discount of an amount that reduces your council tax liability to nil.

If you are jointly liable for council tax with at least one other person, the hardship fund discount should be applied to the liability for the whole property even if only one of you meets the conditions for it.

The guidance states that any money remaining from the COVID-19 hardship fund grant allocated to a local authority should be used to provide additional help with council tax, to provide a higher level of CTR for working-age applicants whose annual liability exceeds £150 in 2020/21, or to provide other support by way of local welfare assistance or similar schemes.<sup>125</sup>

## Notes

### 1. What is council tax reduction

- 1 s13A LGFA 1992  
**E** CTRS(PR)(E) Regs  
**W** CTRSPR(W) Regs  
**S** CTR(S) Regs; CTR(SPC)(S) Regs
- 2 **E** CTRS(PR)(E) Regs  
**W** CTRSPR(W) Regs
- 3 **E** s13A (2)(a) and (b) LGFA 1992  
**W** s13A(i)(c) LGFA 1992  
*R (Winder & Ors) v Sandwell MBC* [2014] EWHC 2617 (Admin)
- 4 **E** Sch 1A para 2 LGFA 1992  
**W** Reg 14 CTRSPR(W) Regs
- 5 **E** Sch 1A para 2(2) LGFA 1992  
**W** Sch 1B para 3(7) LGFA 1992
- 6 **E** Reg 14 and Sch 1 paras 1-4 CTRS(PR)(E) Regs  
**W** Regs 21-25 CTRSPR(W) Regs
- 7 **E** Schs 7 and 8 CTRS(PR)(E) Regs  
**W** Schs 12 and 13 CTRSPR(W) Regs
- 8 **E** Sch 1A para 5(1) LGFA 1992  
**W** Reg 18 CTRSPR(W) Regs

### 2. How council tax reduction schemes work

- 9 **E** s13A(1) LGFA; regs 11(2), 12, 13 and Sch 8 para 7 CTRS(PR)(E) Regs  
**W** s13A(1) LGFA; regs 28-30 CTRSPR(W) Regs  
**S** s80 LGFA; regs 16, 19 & 42 CTR(S) Regs; regs 16, 19 and 40 CTR(SPC)(S) Regs
- 10 **E** Reg 6 CTRS(PR)(E) Regs  
**W** Reg 6 CTRSPR(W) Regs  
**S** Reg 2 CTR(S) Regs; reg 2 CTR(SPC)(S) Regs
- 11 **E** Reg 7 CTRS(PR)(E) Regs  
**W** Reg 7 CTRSPR(W) Regs  
**S** Reg 10 CTR(S) Regs; reg 10 CTR(SPC)(S) Regs
- 12 **E** Reg 2 and 6 CTRS(PR)(E) Regs  
**W** Reg 2 and 6 CTRSPR(W) Regs  
**S** Regs 2 and 4 CTR(S) Regs; regs 2 and 4 CTR(SPC)(S) Regs

- 13 **E** Reg 4 CTRS(PR)(E) Regs  
**W** Reg 4 CTRS(PR)(W) Regs  
**S** Reg 2 CTR(S) Regs; reg 2 CTR(SPC)(S) Regs
  - 14 **E** Reg 5 and Sch 1 paras 4, 8 and 11 CTRS(PR)(E) Regs  
**W** Regs 5 and 9 and Schs 1 and 6 CTRS(PR)(W) Regs  
**S** Regs 8, 24 and 67 CTR(S) Regs; regs 8, 21 and 48 CTR(SPC)(S) Regs
  - 15 **E** Reg 8 CTRS(PR)(E) Regs  
**W** Reg 8 CTRS(PR)(W) Regs  
**S** Reg 11 CTR(S) Regs; reg 11 CTR(SPC)(S) Regs
  - 16 **E** Reg 8(4) CTRS(PR)(E) Regs  
**W** Reg 8(4) CTRS(PR)(W) Regs  
**S** Reg 11(4) CTR(S) Regs; reg 11(4) CTR(SPC)(S) Regs
  - 17 *R (on the application of Williams) v Horsham DC* [2004] The Times, 29 January
  - 18 R(H) 9/05
  - 19 **E** Sch 1 para 5 CTRS(PR)(E) Regs  
**W** Reg 26 CTRS(PR)(W) Regs  
**S** Reg 15(3) CTR(S) Regs; reg 15(3) CTR(SPC)(S) Regs
  - 20 **E** Sch 1 para 5(2) and (3)(i) CTRS(PR)(E) Regs  
**W** Reg 26(2)(a) and (3)(i) CTRS(PR)(W) Regs  
**S** Reg 15 CTR(S) Regs; reg 15 CTR(SPC)(S) Regs
3. **Council tax reduction schemes: pension-age rules**
- 21 **E** Reg 3 CTRS(PR)(E) Regs  
**W** Reg 3 CTRS(PR)(W) Regs  
**S** Reg 12 CTR(S) Regs; reg 12 CTR(SPC)(S) Regs
4. **Council tax reduction schemes: working-age rules**
- 22 **E** Reg 3(b) CTRS(PR)(E) Regs  
**W** Reg 3(b) CTRS(PR)(W) Regs  
**S** Reg 12 CTR(S) Regs
  - 23 s13A(2) and Sch 1A para 2 LGFA 1992
  - 24 CTRS(PR)(W) Regs
5. **Main council tax reduction**
- 25 **W** Regs 22-25 and 31 and Sch 11 CTRS(PR)(W) Regs  
**S** Regs 14(3)(b) and 20 CTR(S) Regs
  - 26 **W** Sch 8 para 14 and Sch 9 para 8 CTRS(PR)(W) Regs  
**S** Sch 3 para 14 and Sch 4 para 7 CTR(S) Regs
  - 27 **E** Sch 1 para 7 CTRS(PR)(E) Regs  
**W** Sch 1 para 2 and Sch 6 para 4 CTRS(PR)(W) Regs; reg 27(1) CTRS(DS)(W) Regs  
**S** Reg 66 CTR(S) Regs; reg 47 CTR(SPC)(S) Regs
  - 28 **E** Sch 1 para 7(3)-(5) CTRS(PR)(E) Regs  
**W** Sch 1 para 2(3)-(5) and Sch 6 para 4(3)-(5) CTRS(PR)(W) Regs  
**S** Reg 66(2) and (3) CTR(S) Regs; reg 47(2) and (3) CTR(SPC)(S) Regs
  - 29 **E** Reg 9 CTRS(PR)(E) Regs  
**W** Reg 9 CTRS(PR)(W) Regs  
**S** Reg 3 CTR(S) Regs; reg 3 CTR(SPC)(S) Regs
  - 30 **E** Sch 1 para 8(6) CTRS(PR)(E) Regs  
**W** Sch 1 para 3(6) and Sch 6 para 5(6) CTRS(PR)(W) Regs  
**S** Reg 67(6) CTR(S) Regs; reg 48(6) CTR(SPC)(S) Regs
  - 31 **E** Sch 1 paras 7 and 8 CTRS(PR)(E) Regs  
**W** Sch 1 para 3(7) and (8) and Sch 6 para 5(7) and (8) CTRS(PR)(W) Regs  
**S** Reg 67(7) and (8) CTR(S) Regs; reg 48(7) and (8) CTR(SPC)(S) Regs
  - 32 **E** Sch 1 para 8 CTRS(PR)(E) Regs  
**W** Sch 1 paras 3 and Sch 6 para 5 CTRS(PR)(W) Regs  
**S** Reg 67(1) CTR(S) Regs; reg 48(1) CTR(SPC)(S) Regs
  - 33 **E** Sch 1 para 8 CTRS(PR)(E) Regs  
**W** Sch 1 para 3(9) and Sch 6 para 5(9) CTRS(PR)(W) Regs; reg 28(9) CTRS(DS)(W) Regs  
**S** Reg 67(9) CTR(S) Regs; reg 48(9) CTR(SPC)(S) Regs
  - 34 **W** Sch 6 para 3 CTRS(PR)(W) Regs  
**S** Reg 23 CTR(S) Regs
  - 35 **E** Sch 1 para 6 CTRS(PR)(E) Regs  
**W** Sch 1 para 1 and Sch 6 paras 1-3 CTRS(PR)(W) Regs; regs 23-25 CTRS(DS)(W) Regs  
**S** Regs 21-23 CTR(S) Regs; reg 20 CTR(SPC)(S) Regs
  - 36 Reg 21, 22A and Sch 1 para 25 CTR(S) Regs; reg 20 CTR(SPC)(S) Regs
  - 37 Reg 17 Council Tax Reduction Schemes (Amendment) (England) Regulations 2017 No.1305
  - 38 **E** Sch 2 CTRS(PR)(E) Regs  
**W** Sch 2 CTRS(PR)(W) Regs; Sch 3 CTRS(DS)(W) Regs  
**S** Sch 1 CTR(S) Regs; Sch 1 CTR(SPC)(S) Regs

- 39 **E** Sch 2 CTRS(PR)(E) Regs  
**W** Sch 2 CTRS(PR)(W) Regs; Sch 3 CTRS(DS)(W) Regs  
**S** Sch 1 CTR(S) Regs; Sch 1 CTR(SPC)(S) Regs
- 40 **E** Sch 1 para 17 CTRS(PR)(E) Regs  
**W** Sch 1 paras 11 and 18 and Sch 6 para 20 CTRS(PR)(W) Regs  
**S** Reg 27 CTR(S) Regs; reg 28 CTR(SPC)(S) Regs
- 41 **E** Sch 1 para 16(3) CTRS(PR)(E) Regs  
**W** Sch 1 CTRS(PR)(W) Regs  
**S** Regs 27-33 CTR(SPC)(S) Regs
- 42 **E** Sch 1 para 13 CTRS(PR)(E) Regs  
**W** Sch 1 para 7 CTRS(PR)(W) Regs  
**S** Reg 24 CTR(SPC)(S) Regs
- 43 **E** Sch 5 CTRS(PR)(E) Regs  
**W** Sch 4 CTRS(PR)(W) Regs  
**S** Sch 3 CTR(SPC)(S) Regs
- 44 **E** Reg 34 CTRS(PR)(W) Regs
- 45 **E** Sch 5 CTRS(PR)(E) Regs  
**W** Sch 4 CTRS(PR)(W) Regs  
**S** Sch 3 CTR(SPC)(S) Regs
- 46 **E** Sch 5 paras 14 and 15 CTRS(PR)(E) Regs  
**W** Sch 4 paras 14 and 15 CTRS(PR)(W) Regs  
**S** Sch 3 paras 13 and 14 CTR(SPC)(S) Regs
- 47 **E** Sch 6 para 9 CTRS(PR)(W) Regs  
**S** Reg 26 CTR(S) Regs
- 48 **E** Sch 6 para Reg 17(2) and Sch 9 CTRS(PR)(W) Regs  
**S** Reg 31(1) and Sch 4 CTR(S) Regs
- 49 **E** Sch 6 para 17(d) CTRS(PR)(W) Regs; reg 51(5) CTRS(DS)(W) Regs  
**S** Reg 39(5) CTR(S) Regs
- 50 **E** Sch 9 CTRS(PR)(W) Regs  
**S** Sch 4 CTR(S) Regs
- 51 **E** Sch 9 para 49 CTRS(PR)(W) Regs  
**S** Sch 4 para 49 CTR(S) Regs
- 52 **E** Sch 6 para 27(5) CTRS(PR)(W) Regs  
**S** Reg 45(4) CTR(S) Regs
- 53 **E** Sch 6 para 28 CTRS(PR)(W) Regs  
**S** Reg 46 CTR(S) Regs
- 54 **E** Sch 1 paras 18 and 23 CTRS(PR)(E) Regs  
**W** Sch 1 para 12 and Sch 6 para 14 CTRS(PR)(W) Regs  
**S** Reg 34 CTR(S) Regs; reg 32 CTR(SPC)(S) Regs
- 55 **E** Sch 1 para 20 CTRS(PR)(E) Regs  
**W** Sch 1 para 14 and Sch 6 para 11 CTRS(PR)(W) Regs  
**S** Reg 30 CTR(S) Regs; reg 34 CTR(SPC)(S) Regs
- 56 **E** Sch 1 para 18(1)(b) and (2) CTRS(PR)(E) Regs  
**W** Sch 1 para 12(1)(b) and (2) and Sch 6 para 14(1)(b) and (2) CTRS(PR)(W) Regs  
**S** Reg 34(1)(b) and (2) CTR(S) Regs; reg 32(1)(b) and (2) CTR(SPC)(S) Regs
- 57 **E** Sch 4 CTRS(PR)(E) Regs  
**W** Schs 3 and 8 CTRS(PR)(W) Regs  
**S** Sch 3 CTR(S) Regs; Sch 2 CTR(SPC)(S) Regs
- 58 **E** Sch 1 para 25 CTRS(PR)(E) Regs  
**W** Sch 1 para 19 and Sch 6 para 21 CTRS(PR)(W) Regs  
**S** Reg 28 CTR(S) Regs; reg 29 CTR(SPC)(S) Regs
- 59 **E** Sch 1 para 24(3) CTRS(PR)(E) Regs  
**W** Schs 1 para 18(3) and 6 para 20(3) CTRS(PR)(W) Regs  
**S** Reg 27(3) CTR(S) Regs; reg 28(3) CTR(SPC)(S) Regs
- 60 **E** Sch 1 para 37 CTRS(PR)(E) Regs  
**W** Sch 1 para 31 and Sch 6 para 33 CTRS(PR)(W) Regs  
**S** Reg 51 CTR(S) Regs; reg 27(2) CTR(SPC)(S) Regs
- 61 **E** Sch 1 para 17(1) CTRS(PR)(E) Regs  
**W** Sch 1 para 11(1) and Sch 6 para 13(1) CTRS(PR)(W) Regs  
**S** Reg 33(1) CTR(S) Regs; reg 31(1) CTR(SPC)(S) Regs
- 62 **E** Reg 11(2) and Sch 1 paras 31-37 CTRS(PR)(E) Regs  
**W** Reg 30 and Sch 1 paras 25-31 and Sch 6 paras 26-33 CTRS(PR)(W) Regs  
**S** Regs 42-51 CTR(S) Regs; regs 40-46 CTR(SPC)(S) Regs
- 63 **E** Sch 1 para 13 CTRS(PR)(E) Regs  
**W** Sch 1 para 7 and Sch 10 para 8 CTRS(PR)(W) Regs  
**S** Sch 5 para 7 CTR(S) Regs; Reg 24 CTR(SPC) Regs
- 64 **E** Sch 6 para 9(6) CTRS(PR)(W) Regs  
**S** Reg 26(6) CTR(S) Regs
- 65 *JRL v Secretary of State for Work and Pensions (JSA)* [2011] UKUT 63 (AAC)
- 66 **E** Sch 1 para 36 CTRS(PR)(E) Regs  
**W** Sch 1 para 30 and Sch 6 para 32 CTRS(PR)(W) Regs  
**S** Reg 50 CTR(S) Regs; reg 46 CTR(SPC)(S) Regs
- 67 **E** Sch 6 Part 1 CTRS(PR)(E) Regs  
**W** Schs 5 and 10 CTRS(PR)(W) Regs  
**S** Sch 5 CTR(S) Regs; Sch 4 CTR(SPC)(S) Regs

- 68 **E** Sch 1 para 34 CTRS(PR)(E) Regs  
**W** Sch 1 para 28 and Sch 6 para 30 CTRSPR(W) Regs  
**S** Reg 48 CRT(S) Regs; reg 44 CTR(SPC)(S) Regs
- 69 **E** Sch 1 para 34(2) CTRS(PR)(E) Regs  
**W** Sch 1 para 28(2) CTRSPR(W) Regs  
**S** Reg 44(2) CTR(SPC) Regs
- 70 **E** Sch 1 para 35 CTRS(PR)(E) Regs  
**W** Sch 1 para 29 and Sch 6 para 31 CTRSPR(W) Regs  
**S** Reg 49 CRT(S) Regs; reg 45 CTR(SPC)(S) Regs
- 6. Alternative maximum council tax reduction ('second adult rebate')**
- 71 **E** Sch 1 para 4 and (PR)(E) Regs  
**S** Reg 14(6) and (7) Regs; reg 14(6) and (7) CTR(SPC)(S) Regs
- 72 CH/48/2006
- 73 **E** Sch 1 para 4 and Sch 3 CTRS(PR)(E) Regs  
**S** Regs 14 and 78 CTR(S) Regs; reg 14 and 56 CTR(SPC)(S) Regs
- 74 **E** Sch 6 para 27 CTRS(PR)(E) Regs  
**S** Sch 5 para 49 CTR(S) Regs; Sch 4 para 27 CTR(SPC)(S) Regs
- 75 **E** s6(5) and Sch 1 LGFA 1992; Sch 1 para 4(3) CTRS(PR)(E) Regs  
**S** s99 LGFA 1992; reg 14(7) and 79 CTR(S) Regs; reg 14(7) and 57 CTR(SPC)(S) Regs
- 76 **E** Sch 3 CTRS(PR)(E) Regs  
**S** Sch 5 CTR(S) Regs; Sch 2 CTR(SPC)(S) Regs
- 77 **E** Sch 3 para 2 CTRS(PR)(E) Regs  
**S** Sch 2 para 2 CTR(S) Regs; Sch 5 para 2 CTR(SPC)(S) Regs

**7. Band E-H council tax reduction: Scotland**

- 78 Reg 14A and 20 CTR(S) Regs; reg 14A CTR(SPC)(S) Regs
- 79 Reg 14A(3)(b) and 20 CTR(S) Regs

**8. Extended and continuing reductions**

- 80 **E** Sch 1 para 38 CTRS(PR)(E) Regs  
**W** Sch 1 para 32 and Sch 6 para 34 and 39 CTRSPR(W) Regs  
**S** Regs 68 and 73 CTR(S) Regs; reg 49 CTR(SPC)(S) Regs
- 81 **W** Reg 31(3) CTRSPR(W) Regs
- 82 **E** Sch 1 para 43 CTRS(PR)(E) Regs  
**W** Sch 1 para 37 CTRSPR(W) Regs  
**S** Reg 55 CTR(SPC)(S) Regs

**9. Applications, decisions and awards**

- 83 **E** Sch 7 paras 2-3 CTRS(PR)(E) Regs  
**W** Sch 12 paras 2-3 CTRSPR(W) Regs; Sch 1 paras 2-3 CTRS(DS)(W) Regs  
**S** Regs 83 and 84 CTR(S) Regs; reg 63 and 64 CTR(SPC)(S) Regs
- 84 **E** Sch 7 para 4 CTRS(PR)(E) Regs  
**W** Sch 12 para 4 CTRSPR(W) Regs; Sch 1 para 4 CTRS(DS)(W) Regs  
**S** Reg 83(6) CTR(S) Regs; reg 63(6) CTR(SPC)(S) Regs
- 85 **E** Sch 8 para 7 CTRS(PR)(E) Regs  
**W** Sch 13 para 5 CTRSPR(W) Regs
- 86 **E** Sch 8 para 5(6) CTRS(PR)(E) Regs  
**W** Sch 13 para 2(6) CTRSPR(W) Regs  
**S** Reg 85(3) CTR(S) Regs; reg 65(2) CTR(SPC)(S) Regs
- 87 **E** Sch 8 para 5(6)-(7) CTRS(PR)(E) Regs  
**W** Sch 13 para 2(6)-(7) CTRSPR(W) Regs; reg 108(6) and (7) CTRS(DS)(W) Regs  
**S** Reg 85(3), (5) and (6) CTR(S) Regs; reg 65(2) and (3) CTR(SPC)(S) Regs
- 88 **E** Sch 8 para 5(5)(c) CTRS(PR)(E) Regs  
**W** Sch 13 paras 2(4) and (5)(c) and 5(4) CTRSPR(W) Regs; reg 111(4) CTRS(DS)(W) Regs  
**S** Reg 86(1) CTR(S) Regs; reg 66(1) CTR(SPC)(S) Regs
- 89 **E** Sch 8 para 4(1) CTRS(PR)(E) Regs  
**W** Sch 13 para 1 CTRSPR(W) Regs; reg 107(1) CTRS(DS)(W) Regs  
**S** Reg 82 CTR(S) Regs; reg 61 CTR(SPC)(S) Regs
- 90 **E** Sch 8 paras 11 and 12 CTRS(PR)(E) Regs  
**W** Sch 13 paras 8 and 9 CTRSPR(W) Regs; reg 114 CTRS(DS)(W) Regs
- 91 **E** Sch 1 para 45(1) CTRS(PR)(E) Regs  
**S** Reg 80(1) CTR(S) Regs; reg 58(1) CTR(SPC)(S) Regs
- 92 **W** Sch 1 para 39 and Sch 6 para 45 CTRSPR(W) Regs; Sch para 104 CTRS(DS)(W) Regs
- 93 **E** Sch 1 para 45(2) CTRS(PR)(E) Regs  
**S** Reg 80(2) CTR(S) Regs; reg 58(2) CTR(SPC)(S) Regs
- 94 **E** Sch 8 para 5 CTRS(PR)(E) Regs  
**W** Sch 13 para 2 CTRSPR(W) Regs  
**S** Reg 85 CTR(S) Regs; reg 65 CTR(SPC)(S) Regs
- 95 **E** Sch 1 para 46(1) CTRS(PR)(E) Regs  
**W** Sch 1 para 37(1) and Sch 6 para 46(1) CTRSPR(W) Regs  
**S** Reg 81(1) CTR(S) Regs; reg 59(1) CTR(SPC)(S) Regs
- 96 **W** Sch 13 para 4 CTRSPR(W) Regs
- 97 **S** Reg 85(7) and (8) CTR(S) Regs



- 98 **E** Sch 8 para 6(2) CTRS(PR)(E) Regs  
**W** Sch 13 para 3(1) CTRS(PR)(W) Regs  
**S** Reg 62(1) CTR(SPC)(S) Regs
  - 99 **E** Sch 8 Reg 6(3) CTRS(PR)(E) Regs  
**W** Sch 13 para 3(2) CTRS(PR)(W) Regs  
**S** Reg 62(2) CTR(SPC)(S) Regs
  - 100 **E** Sch 8 para 9 CTRS(PR)(E) Regs  
**W** Sch 13 para 7 CTRS(PR)(W) Regs  
**S** Reg 89 CTR(S) Regs; reg 69 CTR(SPC)(S) Regs
  - 101 **E** Sch 8 para 9(2) CTRS(PR)(E) Regs  
**W** Sch 13 para 7(2) CTRS(PR)(W) Regs
  - 102 Reg 20A CTR(S) Regs; reg 19A CTR(SPC)(S) Regs
  - 121 Sch 1A para 2(7) and 1B para 5(1)(c) LGFA 1992
  - 122 *R v Gloucestershire CC and another ex parte Barry* [1997] 2 All ER 1 HL
  - 123 *Windsor Securities Ltd v Liverpool City Council* [1978] LGR 502, Court of Appeal, per Cumings-Bruce LJ
  - 124 *SC and CW v East Riding of Yorkshire Council* [2014] VTE per President Professor Graham Zellick
  - 125 [gov.uk/government/publications/council-tax-covid-19-hardship-fund-2020-to-2021-guidance](http://gov.uk/government/publications/council-tax-covid-19-hardship-fund-2020-to-2021-guidance); [gov.uk/government/publications/32020-council-tax-information-letter-16-april-2020](http://gov.uk/government/publications/32020-council-tax-information-letter-16-april-2020)
- 10. If you disagree with a council tax reduction decision**
- 103 **E** Sch 1A para 2(6) LGFA 1992; Sch 8 para 12(4) CTRS(PR)(E) Regs  
**W** Sch 1B para 5(1)(b) LGFA 1992; Sch 14 para 3 CTRS(PR)(W) Regs; Sch 10 para 3 CTRS(DS)(W) Regs
  - 104 **EW** s16 LGFA 1992  
**E** Sch 7 para 8(1) CTRS(PR)(E) Regs  
**W** Sch 12 para 8 CTRS(PR)(W) Regs; Sch 1 para 8 CTRS(DS)(W) Regs
  - 105 *SC and CW v East Riding of Yorkshire Council*, Appeals 2001M113393 and 2001M117503, 27 May 2014
  - 106 **E** Sch 7 para 8(2) CTRS(PR)(E) Regs  
**W** Sch 12 para 9 CTRS(PR)(W) Regs
  - 107 **W** Sch 12 para 8(2) CTRS(PR)(W) Regs; Sch 1 para 8(2) CTRS(DS)(W) Regs
  - 108 **E** Sch 7 para 8(3) CTRS(PR)(E) Regs; reg 21 VTE(CTRA)(P) Regs  
**W** Sch 12 para 10 CTRS(PR)(W) Regs; reg 29 VTW Regs
  - 109 **E** Reg 21 VTE(CTRA)(P) Regs  
**W** Reg 29 VTW Regs
  - 110 *Norman and another v East Dorset DC* [2012] EWHC 3696 (Admin)
  - 111 Reg 90A(3) CTR(S) Regs; reg 70A(2) CTR(SPC)(S) Regs
  - 112 Reg 90A(4) CTR(S) Regs; reg 70A(4) CTR(SPC)(S) Regs
  - 113 Reg 90B(1) CTR(S) Regs; reg 70B(1) CTR(SPC)(S) Regs
  - 114 Regs 90D(1) and (2) CTR(S) Regs; regs 70C(1) and (2) CTR(SPC)(S) Regs
  - 115 s66(2) (ba) LGFA 1992

### 11. Discretionary reductions

- 116 s13A(1)(c) LGFA 1992
- 117 s13A(7) LGFA 1992
- 118 s13A(6) LGFA 1992
- 119 *Morgan v Warwick DC* [2015] RVR 224
- 120 *Morgan v Warwick DC* [2015] RVR 224

# Chapter 9

## Bills and payments

### **This chapter covers:**

1. Who must pay the bill (below)
2. When bills should be issued (p185)
3. How the bill is calculated (p187)
4. How bills are served (p190)
5. Information the bill should contain (p191)
6. Payment arrangements (p194)
7. Penalties (p201)
8. Appeals against the amount of the bill (p202)

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### **1. Who must pay the bill**

Chapter 5 identified who is liable for council tax, but in most cases no one need actually pay the tax until a bill has been issued.<sup>1</sup> As council tax is a tax on property, the individual is not under a duty to inform the local authority if s/he is or may be a liable person, but the expectation is on the local authority to serve bills. If the name of a liable person cannot be established after reasonable enquiries have been made by the local authority, the bill may be addressed to the 'council taxpayer'.<sup>2</sup> Bills may be issued to both individual taxpayers and a company if it is liable – eg, as an owner of a dwelling.

Local authorities may serve bills, certain notices and information required for council tax by electronic means. You must agree for the bill to be served electronically.<sup>3</sup>

Local authorities should ensure that their computer systems do not issue bills in the name of taxpayers who have died. These should normally be sent to the 'personal representatives of the deceased' or the 'executors of the deceased'.

The liable person's spouse or partner, and anyone who has the same degree of legal interest in the dwelling, is jointly liable for the bill (see p86). In Scotland, but not England and Wales, someone who is jointly liable with the person(s) named on the bill but whose name is not included on the bill is still liable to make any payments required.<sup>4</sup>

In England and Wales, no payment can be required of someone who is jointly liable who has not previously been included on a bill until a 'joint taxpayers' bill' has been issued.<sup>5</sup> This must be served within six years of the first day of the financial year to which it relates. The liable people themselves must determine how exactly they share the responsibility for the bill.

Joint liability means that both or all jointly liable taxpayers can be held individually or collectively liable to pay the whole amount. A decision on 'joint and several liability' can be appealed (see Chapter 11).

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## **2. When bills should be issued**

The local authority should serve a council tax bill on each chargeable dwelling each financial year. In England and Wales, this should be done 'as soon as practicable' after the local authority first sets a council tax for the year.<sup>6</sup> In Scotland, a local authority should serve the bill as soon as practicable after it has first set a council tax and knows the water charge for the year.<sup>7</sup> Local authorities will want to ensure that bills are produced promptly to maximise their cash flows. Most local authorities aim to send out council tax bills in mid-March, with the payment falling due from 1 April. If you pay by direct debit, you may be given several dates in April on which to make your first payment.

Separate bills must be sent for different financial years and for different dwellings, even if the same person is liable for both.<sup>8</sup> This rule is sometimes breached by outsourced companies acting for local authorities who may issue repeated bills for the same periods, each with differing amounts. In such a case, problems may arise at the enforcement stage, as it can be unclear which bill is to be treated as valid and difficult for the local authority to show it has complied with the rules on billing. In England and Wales, however, one council tax bill may also cover the current and preceding financial years if it is for the same dwelling.<sup>9</sup>

In Scotland, where it appears to the local authority that a person may be liable for water and/or sewerage charges in respect of the same dwelling which have not yet been demanded, details of these must be included in the bill.<sup>10</sup> Before doing so, the local authority must take reasonable steps to ascertain whether the water and/or sewerage charges are payable.<sup>11</sup>

### **Late bills**

A local authority must issue a bill (or 'demand notice') 'as soon as reasonably practicable'.<sup>12</sup> If there has been a long delay, the local authority may not be able to recover the money if it has been in breach of this requirement. In one case concerning non-domestic rates, the local authority delayed seven years before serving demand notices.<sup>13</sup> When the ratepayers failed to pay, the local authority

obtained liability orders. The High Court, however, quashed the liability orders as the delay in serving the demand notices was 'inexcusable'.

The High Court has considered the effect that serving a bill late had on validity.<sup>14</sup> Ordinarily, mere delay is not sufficient to invalidate a notice, even if it is sent several years after the tax fell due. It ruled that the test was to look at the length of the delay and the impact on the taxpayer. The key test is whether 'prejudice' has been caused. 'Prejudice' is different from inconvenience and must be substantial, and can be caused in a number of ways. The Court said that there was also a public interest in ensuring that local taxes were collected, which had to be weighed in the balance.

### Prejudice caused by late billing

Prejudice could arise for an individual on a low income who is sent council tax bills for previous financial years that do not take into account any past entitlement to a council tax reduction (CTR) or to council tax benefit (CTB) that might have existed at the time. Indeed, any application for CTR or CTB for earlier financial years will be thwarted by the benefit backdating rules. Arguably, prejudice is caused to anyone who effectively loses a right to claim CTR or CTB which might have covered the total liability for the year concerned. Similarly, if you have been unable to claim under a CTR scheme since 1 April 2013 because of failure to supply a demand notice in time, it would be possible to challenge the bill as invalid as it has caused prejudice – ie, the loss of the opportunity to apply for a CTR. Prejudice may also arise from the failure to be provided, as soon as practicable, with the information accompanying the demand notice (see p192). Prejudice may arise from not being able to make provision from a limited income for paying the bill or from the loss of the right to pay instalments or loss of an appeal right. The longer the delay that is involved in the serving of a demand notice, the greater the risk that you will be able to show some procedural or substantive prejudice.<sup>15</sup>

### Challenging late issue of a bill

If you want to challenge the late issue of a bill, do so before a liability order is issued by a magistrates' court.<sup>16</sup> In theory, this should also be the case before the sheriff court in Scotland, but the difficulty is the Scottish summary procedure does not give notice to the council taxpayer (see Chapter 10).

Another remedy might be to lodge an appeal with the valuation tribunal or valuation appeal committee in Scotland under section 16 (section 81 in Scotland) of the Local Government Finance Act 1992, which allows appeals on 'any calculation' in respect of a sum of council tax (see p260). The right to appeal arises as soon as you become aware of the bill. If liability order proceedings are commenced and a summons is issued, it is always best to attend the magistrates' court and raise the issue before the court.



### Reducing council tax if a bill is late

In England and Wales, a local authority has the power to reduce an individual council tax bill (see p177). If a bill is served late, perhaps years after the original liability arose, you can apply to the local authority to reduce the sum concerned by way of a discretionary reduction. This may be granted for any liability to council tax, no matter when it arose.<sup>17</sup>

Late service of a bill may amount to maladministration (see p295) and cause hardship. Although a bill being served late does not automatically make it invalid, a local authority is expected to act sympathetically and reasonably if you are prejudiced through official error, including not giving you enough time to pay. A failure to respond properly if a late bill causes hardship to a vulnerable person may amount to maladministration. If a council has an anti-poverty strategy, it is expected to act in accordance with it.

### Making a complaint

If you are a victim of late billing for which you are not responsible, make a formal complaint to the local authority. Experience suggests that some billing authorities will make a decision to withdraw a late bill rather than face a formal complaint investigation. You should also be prepared to appeal either to the valuation tribunal or valuation appeal committee in Scotland if there is a question of CTR entitlement (see Chapters 8 and 11) or the First-tier Tribunal (Social Security and Child Support) if the alleged bill concerns a matter of CTB entitlement for a period before 1 April 2013. It is important to consider the time limits and you should not delay.

A complaint will examine the reasons for the delay and find out why, and by whom, a decision was made to retrospectively reopen an account from an earlier financial year which had been considered closed.

The Ombudsman will investigate late billing cases as a form of maladministration (see p294).<sup>18</sup>

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## 3. How the bill is calculated

Liability for council tax is calculated on a daily basis.<sup>19</sup> Council tax is payable for each day a dwelling is a chargeable dwelling which is the sole or main residence of the taxpayer, with the taxpayer being liable for each day s/he lives in the dwelling. As soon as you cease to have sole or main residence, liability to pay tax ends, unless the dwelling is unoccupied and not exempt. In some cases, you may be able to get a discount on a vacant dwelling or be subject to a premium (see Chapter 7).<sup>20</sup> However, the bill issued at the beginning of the financial year is for the full year. The local authority is required to use certain assumptions to estimate what it thinks the council tax will be for the whole year and correct it later, if necessary (see p189).

The local authority must estimate the 'chargeable amount' by taking the relevant amount of council tax for that dwelling (depending on its valuation band), and then make the following assumptions.

- The person will be liable for every day.
- The dwelling's valuation band will not change and it will remain a chargeable dwelling throughout the year.
- Any reduction under the disability reduction scheme has been properly calculated and applies throughout the year.
- The bill is either eligible or not eligible for a discount throughout the year.
- Any council tax reduction (CTR) which applies does so throughout the year.<sup>21</sup>
- Liability for Scottish Water charges applies throughout the year.<sup>22</sup>

If more than one reduction applies, they should be applied in the following order:

- disability reduction;
- discount;
- any reduction under a CTR scheme and/or any discretionary reduction.

The local authority must ensure that if 100 per cent CTR is awarded, this is equal to your liability.

The bill can also take into account any credits from past periods, penalties due and any alleged overpayment of council tax benefit (CTB) pre-2013 or tax which remains unpaid as a result of the removal of a CTR after it is awarded. **Note:** it is not possible to be overpaid an amount of CTR (see p175).

The question of whether an amount of excess CTB from more than one year earlier may be subject to recovery action through the magistrates' court and can be challenged. When CTB was in existence, the system operated in tandem with the housing benefit system, with excess payments recoverable as a civil debt through the County Court.

Special rules apply if a bill is for a period earlier in the financial year, and if, on the day it is issued, you are no longer liable for council tax at that address. The bill will either:

- require payment of the amount due up to the last day of liability (calculated as described above but based on the actual, not estimated, circumstances); *or*
- if you are due a credit, require the amount payable (if any) after the credit has been offset against the chargeable amount.<sup>23</sup> This could apply, for example, following a delay in recalculating a reduction or, in theory, where a referendum over the level of council tax is held.

If a bill is issued after the end of the year to which it relates, it must require payment of the amount due for the year, calculated as described above, but based on the actual circumstances and after taking into account any credits carried over from earlier years. Such payments are usually requested as a lump sum.

## In-year changes to assumptions

It may become clear during the course of a year that an estimated amount has been based on an incorrect assumption – eg, your entitlement to a discount may change partway through the year. If so, the local authority should now calculate the appropriate amount that appears due for the year.<sup>24</sup> If:

- the new amount is **greater than** the estimated amount, the local authority should bill you and give you at least 14 days to make the interim payment;
- the new amount is **less than** the estimated amount, the local authority should notify you accordingly and make an interim repayment (but see below).

In England and Wales, if an overpayment of council tax has occurred because you are no longer liable to make payments on one dwelling but become immediately liable to make payments to the same local authority on another dwelling, the local authority may credit the overpayment against your new liability, rather than make a repayment to you. This is likely to be done unless you specify otherwise to the authority. If you overpaid a lump-sum payment, the local authority should make an interim repayment in the usual way.<sup>25</sup>

If you have made payments under the statutory instalment scheme or, in England and Wales, the council tenant instalment scheme, see p197 and p198.

In Scotland, if an overpayment of council tax has occurred because you are no longer liable to make payments, you can ask the local authority to refund the amount to you. The council may retain the overpayment until it receives such a request, and may seek to offset the overpayment against any subsequent balance due.<sup>26</sup>

In England, further rules apply about changes in the tax payable as a consequence of any local referendum (see p193).<sup>27</sup>

## Incorrect payments

The actual amount owed to the local authority will be known for certain only at the end of the financial year or when your liability ends. Another bill is therefore required if a previous bill was issued for a financial year (or part of a financial year), and the payment(s) required was, in fact, more or less than the actual liability and there has been no appropriate adjustment. The local authority should, as soon as practicable after the end of the year (or the part of a year), serve a new bill on you as the liable person. This should state the actual amount due and adjust the amount(s) required to be paid under the previous bill.<sup>28</sup>

If the amount stated in the new notice is greater than the amount previously required, you must pay the difference within a period specified by the local authority. This must be at least 14 days following the issue of the new bill.<sup>29</sup>

If there has been an overpayment of council tax and you require a refund, this must be given. In any other case, the local authority may decide either to repay the amount in question to you or credit it against any future council tax liability.<sup>30</sup>

However, if the overpayment has arisen because you are no longer liable to make payments on one dwelling, but are immediately liable to make payments to the same local authority on another dwelling and you have not made a lump-sum payment, the local authority may require the amount of any overpayment to be credited against the new liability.<sup>31</sup>

In England and Wales, if the local authority is required to repay a sum but does not do so, you can take recovery action using the civil debt procedure in the County Court.<sup>32</sup>

In cases where the local authority refuses to repay the overpayment, following the decision in *Lone v Hounslow London Borough Council*,<sup>33</sup> it is necessary for the taxpayer to obtain a ruling from the valuation tribunal before taking recovery action. The small claims procedure of the County Court can be used for sums of up to £10,000. A similar procedure exists in Scotland for sums of up to £5,000. Complaints may also be taken to the Ombudsman (see p294).

See also excessive amounts of council tax on p193.

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## 4. How bills are served

Before you are required to pay council tax, a bill must be served.<sup>34</sup> This does not mean that you actually received the bill, only that the local authority has served it in such a way that you could be expected to know about it. Bills may be served by:<sup>35</sup>

- post; *or*
- being delivered to the liable person at her/his usual or last known address; *or*
- being delivered to some other person at the chargeable dwelling; *or*
- being fixed to some conspicuous part of the dwelling; *or*
- email, by special arrangement.

If a bill has been served in one of the above ways, the date of issue is the date the bill was posted or left at the address. In all other cases, it is the actual service of the notice – eg, where the notice is delivered by hand. The bill should include the date of issue, which determines such matters as when payments become due.<sup>36</sup> Local authorities should ensure that when a bill is sent by post, the first instalment due is payable at least 14 days after the day on which it is delivered to a post office. Local authorities should maintain records of the days on which bills are posted so that they can present evidence of the date of issue for any particular bill. If the bill has not arrived at the appropriate address, the local authority must serve it again if it wishes to start enforcement proceedings (see Chapter 10). If the bill is formally returned as undelivered by the post office (known as ‘returned, gone away’), the local authority should make investigations as to who should now be liable. Ignoring such returns may give rise to late bill appeals.



A document is deemed served two days after it is sent by first-class post.<sup>37</sup> Some local authorities use outsourced providers who organise specially arranged deliveries with the post office. In such a case, the local authority must still be able to provide evidence that demands have been served correctly. It is essential that the notice of proceedings comes to your attention if enforcement is commenced.<sup>38</sup>

## **Failure of service**

Failure of service of demands (or summonses based upon non-payment of demands) will provide grounds to have any liability order set aside.<sup>39</sup> Cases of deliberate failure to serve enforcement notices, as a result of a deliberate act or omission by a process server or agent, are treated very seriously by the courts. Such failures to serve will entitle the taxpayer to apply to have enforcement proceedings arising from the failure to be set aside. The individual process server and their supervising principal may be punished for contempt of court.<sup>40</sup>

Service of notices by social media is not permitted, as this is outside the scope of the legislation and would not have been intended by parliament when the relevant law was made.<sup>41</sup>

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## **5. Information the bill should contain**

The bill must contain certain prescribed information. There are minor variations between England, Wales and Scotland. Local authorities can decide the exact wording and how the information appears on the bill.

### ***Information provided on council tax bills<sup>42</sup>***

- The name of the person to whom the bill is addressed. If not known, the bill may be addressed to the ‘council taxpayer’.
- The date of issue.
- The period covered by the bill.
- The address of the chargeable dwelling.
- The dwelling’s valuation band.
- The amount of council tax (and Scottish Water charges in Scotland) per chargeable dwelling for the relevant valuation band for each tier of local government (eg, district and county council) including, where applicable, a specified amount to cover parish or community council expenditure.
- In England, details about the amount of adult social care expenditure by the authority.
- In England and Wales, a reference to the billing authority’s discretionary power to reduce bills under section 13A(1) of the Local Government Finance Act.<sup>43</sup>
- How the amount of the council tax (and Scottish Water charges in Scotland) payable has been calculated, showing separate amounts of any disability reduction, discount and

variation of discount or council tax reduction (CTR) under the local authority scheme and the period they cover.

- In England, the percentage change in council tax from the previous year, expressed to one decimal place.
- The gross expenditure of each billing and precepting authority for the year and the previous year, and the reasons for any difference between the figures for the previous and current year.
- The opinions of the billing authority and precepting authority of the effect that its gross expenditure has on the level of council tax set for the relevant year.<sup>44</sup>
- Details of any discount, reduction or premium and the reason for it.
- A statement of your duty to inform the local authority of anything that affects entitlement to a discount and the fact that if you do not comply with this duty, without a reasonable excuse, the local authority may impose a financial penalty.<sup>45</sup>
- The amount (if any) to be credited against the amount of council tax which would otherwise be payable for the relevant year.
- The amount of any penalty. (Scottish civil penalties are usually issued as a separate bill.)
- Council tax arrears from the preceding year(s), but only to the extent that they have not already been billed for. (In Scotland, arrears are usually issued as a separate bill.)
- The amount of council tax payable and how it should be paid.
- The address, telephone number and email to which enquiries may be made.
- A statement on any CTR applicable, explaining the amount of CTR and the reasons for it.<sup>46</sup>
- An explanation of the duty to report changes of circumstances<sup>47</sup> and the possible consequences of failing to notify relevant changes in circumstances.
- In Scotland, the average Scottish council tax charge (excluding water charges) for a band D property for the current year and for a band D property in the previous year.

Bills served after the end of the year in question, or with another bill for another period, are not required to contain all of the above information.<sup>48</sup>

## Explanatory notes and accompanying information

The bill should be accompanied by a set of explanatory notes that provide key points of information on: valuation and banding, exempt dwellings, disability reductions, discounts, appeals and the local CTR scheme. The billing regulations distinguish between information which a demand notice is required to contain and information which it is required to supply with a demand notice.<sup>49</sup>

Additionally, in England and Wales, the bill, if issued before the end of the financial year to which it relates, must be accompanied by information explaining the local authority's income and expenditure. Bills that are served after the end of the financial year concerned or with another bill are not required to contain all the specified information.<sup>50</sup>

A local authority may publish the information on its website rather than including the information with a demand notice.<sup>51</sup> The website address must be provided in the demand notice's explanatory notes. It must also be stated that there is a right to request, in writing, a printed copy of that information free of charge and that the authority must supply it as soon as reasonably practicable.<sup>52</sup>

Local authorities are also required to include information about the annual percentage changes in council tax between the previous year and the relevant year. In England if the valuation band of a dwelling has changed, the bill must show the percentage difference between the amounts calculated in the relevant year and the previous year.<sup>53</sup>

No change in the adult social care precept information was required for council tax bills in 2019/20. For precepts after this, the government has decided to leave the current approach in place.<sup>54</sup>

## **Invalid bills**

A bill may be invalid if it does not contain all the required information. Nevertheless, if the failure to comply with these requirements arose because of a mistake and the amount to be paid is demanded correctly, the bill is treated as valid. Simple failure to include all the information is unlikely to prevent a bill being payable.<sup>55</sup> The local authority must issue a correction and a statement of the matter omitted from the bill as soon as practicable after the mistake has been found and send it to you.<sup>56</sup> However, there may be situations where the details contained in the bill are confusing or contradicted by amounts stated in other demands. It may be that the bill is a nullity and should be treated as invalid. If the amount stated in the bill is incorrect, it should be challenged immediately with the local authority and an appeal commenced (see Chapter 11).<sup>57</sup> If the local authority or an outsourced company acting on its behalf does not respond, make a formal complaint and ensure that it is acknowledged. In order to render a bill invalid so as to provide a defence against non-payment, the bill must fail to include information and must cause significant prejudice affecting understanding of the rights of the individual or liability to pay.<sup>58</sup>

## **Excessive amounts of council tax and referendums**

In England, if an authority's relevant basic amount of council tax is excessive, the local authority is required to include details as a footnote and give notice that a referendum will be held with further information to be supplied in due course. A referendum may be postponed by the Secretary of State under the Coronavirus Act 2020. The demand notice continues to be valid in spite of the inclusion of the additional amount identified as excessive but, importantly, the local authority cannot take recovery action in respect of the additional amount until a referendum is held.

No liability order may be issued and no enforcement action (eg, an attachment of earnings order) may be taken for an additional amount, unless it is approved by a referendum. The 'additional amount' is the difference between the amount on the bill and the capped amount and/or any substituted amount which is applicable following a referendum.<sup>59</sup>

If the excessive amount is not approved in a referendum, it is held to be void, or if no referendum is held, a substitute non-excessive amount takes effect, and a local authority may issue a further revised demand notice.<sup>60</sup> No recovery action can be taken in respect of the amount on a demand that has been declared excessive following a referendum.<sup>61</sup>

If you request that a fresh bill be issued, the local authority must provide it. This also appears to have consequences for enforcement as, if the local authority does not issue a fresh bill, the sum cannot be enforced as the local authority will be unable to prove it has followed the rules on billing that are essential for applying for a liability order (see Chapter 10).<sup>62</sup>

Where the result of the referendum is to approve the level of council tax originally set by the local authority, the original demand notice is enforceable.<sup>63</sup>

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## **6. Payment arrangements**

Most taxpayers have a right to pay by instalments. The 'normal' method of payment is by 10 monthly instalments between April and January (see p195).<sup>64</sup> In some cases, this can be spread over 12 instalments (see p196). The local authority may, however, adopt a variety of different payment arrangements, including:

- in England and Wales, the council tenant instalment scheme (see p197). In Scotland, the local authority may establish an agency arrangement with a housing body which then establishes its own payment arrangements;<sup>65</sup>
- special arrangements (see p199);
- discounted lump-sum payments (see p199);
- discounts for non-cash payments (see p200).

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### ***Suspended instalments during the coronavirus pandemic***

During the coronavirus pandemic, a number of billing authorities suspended collection of the first two instalments of the 2020/21 financial year (due in April and May 2020) with the intention of transferring liability for these instalments to 2021. This means that the last two instalments will fall due in January and February 2021, subject to any other arrangement. This is a policy decision and will vary between councils.



## Instalments

In England and Wales, if the bill is issued:<sup>66</sup>

- on or before 30 April in the relevant year, payments under the statutory scheme are made in 10 monthly instalments;
- from 1 May onwards, the monthly instalments must equal one less than the number of whole months remaining in the financial year (see below);
- between 1 January and 31 March in the relevant year, the total amount due is payable in a single instalment on the day specified on the bill.

The instalments must be made in consecutive months, but the local authority may choose the month in which to start and state this on the bill.<sup>67</sup>

### *Number of instalments*

<i>Month in which demand notice is issued</i>	<i>Number of instalments</i>
April (or before)	10
May	9
June	8
July	7
August	6
September	5
October	4
November	3
December	2
January	1
February	1
March	1

In England, where the total amount is calculated by reference to a determination involving a discount which varies during the course of the year (eg, where the Secretary of State or the local authority changes the classification of dwelling entitled to discount), the monthly instalments do not need to be equal amounts but shall be as specified in the notice.<sup>68</sup>

In Scotland, a local authority cannot demand the first instalment in the same month as the bill was issued. If the bill is issued:<sup>69</sup>

- before 1 April in the relevant year, the local authority determines when the first of the 10 instalments is due – this can be either in April or May;
- from 1 April onwards, the monthly instalments must equal one less than the number of whole months remaining in the financial year;
- between 1 December and 31 March in the relevant year, the total amount due is payable in a single instalment on the day specified on the bill.

## **Paying in 12 instalments**

In England, you also have a legal right to request to pay your council tax bill in 12 monthly payments, rather than a maximum of 10, in the course of the year.<sup>70</sup> Information on how to arrange this should be given with the explanatory notes which accompany the demand notice sent at the beginning of the financial year.<sup>71</sup> Where your request to arrange payment in 12 monthly instalments is made between 1 January and 15 April in the year in which the financial year begins, the number of instalments is 12. If your request is made on or after 16 April of the year in question, the number of monthly instalments is the number of whole months remaining in the relevant year after the issue of the notice.<sup>72</sup> Effectively, in any case arising after 16 April, you are able to spread the remaining year's liability over as many months as remain, which also means treating February and March as instalment months.

### **Example**

Donna wants to pay in 12 monthly instalments for the new tax year. She must request this from the local authority between 1 January and 15 April. However, Donna does not make her request until 6 June. She has nine instalments to pay (July to March).

Some Scottish and Welsh councils allow 12 monthly instalments at their own discretion.

The onus is on you to begin the process by requesting this from the local authority.

## **Amount of the instalments**

The amount of the instalments is worked out by dividing the total amount of the bill by the number of instalments. If this gives an amount which is a multiple of a pound, the instalments will be of that amount.<sup>73</sup>

### **Example**

Karim's council tax is £1,200 and payments are to be by 10 instalments. The amount of each instalment is £120.

If the total amount due, divided by the number of instalments, does not give an amount which is a multiple of a pound, the amount payable is divided by the number of instalments and rounded to the nearest pound. Amounts ending in 50p should be rounded up. This amount is the amount of the instalments other than the first. This first amount is multiplied by the number of instalments less one, and the resulting amount is subtracted from the total amount payable. The amount remaining is the amount of the first instalment.<sup>74</sup>

**Example**

Emily's council tax liability is £500 and payments are to be by nine instalments.

The amount of all but the first instalment is £56 ( $£500 \div 9 = £55.5555$ ).

The first instalment is £52 ( $£500 - (£56 \times 8 \text{ instalments})$ ).

If you only have a small amount of council tax to pay, the instalment method is an expensive way for the local authority to collect it. Consequently, local authorities have the power not to accept any instalment for less than £5. If the calculation of instalments would produce an instalment of less than £5, the local authority may require that the second instalment be added to the first and that the number of instalments be reduced by one. If the total amount payable is less than £10, the local authority may request payment of that amount in a single instalment. If the total amount payable is £10 or more, the local authority may reduce the number of instalments to the greatest number that allows individual instalments of at least £5.<sup>75</sup>

If you make a request during the financial year, the local authority must issue an instalment notice 'as soon as reasonably practicable'.<sup>76</sup>

### Instalment scheme for council tenants

In England and Wales, a local authority may have an instalment scheme for its council tenants to pay their council tax on the same day as they pay their rent, but these have become increasingly rare. This means that if you pay your rent weekly, for example, the local authority may also allow you to pay your council tax weekly.<sup>77</sup> Check with your local authority whether the scheme operates in your area.

In Scotland, the local authority may establish an agency arrangement with a housing body. It is then for that housing body to establish appropriate payment arrangements.<sup>78</sup>

### Instalments when liability ends

No further instalments under either the statutory schemes or, in England and Wales, the council tenants scheme are due once you are no longer liable for council tax (and for Scottish Water charges in Scotland). If more than one person is jointly liable, whether named on the original bill or not, this only applies if both or all of them are no longer liable. In England and Wales, if the only person(s) who is liable is someone not named on the original bill, the local authority must issue a joint taxpayers' notice on her/him.<sup>79</sup>

If the original liable person(s) is no longer liable, the local authority must serve a notice on the former liable person or, if there was joint liability, on at least one of the jointly liable people. The notice should state the actual amount due up to the day liability ended. This should be done as soon as practicable after liability ends.<sup>80</sup>

If the amount due is less than the total amount paid, the liable person may require the local authority to repay the overpayment. If no request is made, the local authority may decide either to repay it or to credit it against a subsequent council tax debt on another property for which the same person is liable.<sup>81</sup> It cannot be used to meet any other debt recoverable by the local authority, such as an overpayment of housing benefit.

If the amount due is greater than the total amount paid, the local authority will issue a bill requiring the liable person to pay the outstanding amount to the local authority. The local authority must allow at least 14 days from issuing the bill for this amount to be paid.<sup>82</sup>

If the former liable person becomes, once again, liable for the tax to the local authority in the same financial year, the matter is dealt with afresh. Any previous overpayment of tax by the liable person may, however, be credited against the subsequent liability.

### Instalments when liability changes

The instalment schemes are based on the assumption that your circumstances will remain the same throughout the year. Liability may change, however, because:<sup>83</sup>

- there is a change to a joint liability or from a joint liability to sole liability; *or*
- the dwelling becomes exempt (see Chapter 4); *or*
- the dwelling's valuation band changes (see Chapter 3); *or*
- entitlement to a discount/variation changes (see Chapter 7); *or*
- entitlement to a disability reduction changes (see Chapter 6); *or*
- entitlement to a council tax reduction (CTR) changes (see Chapter 8); *or*
- a premium is imposed (see p122); *or*
- the council tax changes as a result of budgets being capped by central government; *or*
- liability to pay Scottish Water charges in Scotland changes.

The local authority must adjust the remaining instalments (if any) as soon as practicable after the change of circumstances.<sup>84</sup> As many adjustments may be made as the circumstances require. The local authority must also serve a revised bill (an adjustment notice) each time an adjustment is made. This should state the:

- revised estimated liability for the relevant year, assuming no further changes; *and*
- amount of any instalments that remain 14 or more days after the issue of the notice.

In England and Wales, if instalments are payable under the statutory scheme and additional amounts are now due as a result of a change, the payments must be fixed in accordance with the rules for that scheme (see p195). In Scotland, the



local authority has the discretion to set the amount of each remaining instalment. If no further instalments are due, the additional amount must be paid as a lump sum within a period set by the local authority. The local authority must give you at least 14 days from the date the bill was issued to pay the amount owing. In Scotland, at least two instalments must fall to be paid under the demand notice concerned in accordance with the statutory instalment scheme or any agreement with the council.<sup>85</sup>

If the revised amount is less than the combined amounts of the instalments payable before the change, you should request that the overpayment be refunded. If you do not make such a request, the local authority may decide either to repay it or credit it against your subsequent liability.<sup>86</sup>

If a local authority revises its estimate of your council tax liability, when adjusting the remaining instalments it must take into account any amounts paid before the day on which the adjustment takes effect which were due to be paid after that day.<sup>87</sup>

## Special payment arrangements

A local authority may agree that you can pay your council tax in a particular manner.<sup>88</sup> These special payment arrangements may be entered into either before or after a bill has been issued, although in England and Wales if there is joint liability, the arrangement can only be entered into with someone named on the bill. Special payment arrangements may prove useful if you are facing financial problems. These may allow payments to be ended or adjusted. They may also allow for a fresh estimate to be made if the original estimate turns out to be wrong. If the special arrangement is entered into after the bill has been issued, it may make provision for dealing with any sums paid by instalments.

A bill issued under a special arrangement requires payment of the amount concerned:

- within a set period of not less than 14 days after the day the bill is issued; *or*
- by instalments and payable at intervals and on days as specified on the bill.

The normal enforcement procedures (see Chapter 10) do not apply to special agreements. Procedures to be followed in the event of non-payment should be set out.

**Note:** if you are facing financial hardship, see p177.

## Discounts for lump-sum payments

The local authority may decide to encourage payment of council tax by lump sums as this improves its cash flow and reduces its collection costs. The benefits and costs of such an arrangement, not only to the local authority but to all taxpayers, need to be considered carefully. To encourage lump-sum payments,

the local authority can offer a discount.<sup>89</sup> Contact your local authority to find out if it offers a discount.

## **Discounts for non-cash payments**

Various methods are available to pay the council tax, but some are more cost-effective for local authorities than others. From the local authority's point of view, direct debit has the most advantages, and direct debit mandate forms are often sent with demand notices to encourage the use of this payment method. In addition, the local authority is able to offer a discount to taxpayers if they use such non-cash methods of payment.<sup>90</sup>

The local authority should consider the costs and benefits of such arrangements. The size of the discount and when non-cash payments are to be accepted must be decided by the local authority on or before the day it first sets the council tax for the year.

If an adjustment is needed to the amount paid and the amount has been paid by a discounted non-cash payment, the instalment or other payment on which the discounted amount was accepted must be treated as having been paid in full. Any sum to be repaid, or credited against any subsequent liability, however, is reduced by the same proportion as was allowed for the discount.

## **If you have debts from previous years**

If you make a payment to a local authority when you have an existing debt (eg, if you have a council tax liability for a previous year), you should specify the period of liability that the payment is to cover. You must do this, even if the local authority has suddenly issued a bill for an earlier period of liability. If you are paying towards this earlier period, clearly indicate this when making your payment, to avoid the local authority only using your payment for the current year. If you pay by cheque, mark the back of the cheque with details of the year for which payment is made and also enclose a written note. If you do not, you could face enforcement action, as most council tax computer systems are not programmed to recognise such overpayments and, as a default, the total payment may be allocated to the current year while the older bill remains uncredited. If you owe council tax for a previous year and want to repay it by instalments, the local authority may agree to this.

The software default in Scotland is that payments-made from 1 April to 31 March are for the current financial year, unless a specific council tax payment reference number, which has a year reference number built in, is quoted with the payment. Some Scottish taxpayers have, upon receiving a new council tax bill in February, started to make payments in March which cause the payment to be defaulted to the terminating financial year. The new tax year reference numbers are not 'live' until 1 April.

If liability orders have been obtained in earlier years, the local authority is likely to include sums in costs. You should challenge the sums in costs (see p214).

If the local authority repeatedly allocates payments to different years so as to create or allow indebtedness to continue, make a complaint as this is likely to be maladministration (see p295).

## 7. Penalties

In certain circumstances, a civil penalty may be imposed by the local authority if you:

- fail to respond to a request for information to identify the liable person (see Chapter 5); *or*
- fail to notify the local authority that a dwelling is no longer entitled to an exemption (see Chapter 4); *or*
- fail to notify the local authority that you are no longer entitled to the same level of discount (see Chapter 7) or premium (Chapter 8); *or*
- fail to timeously advise the local authority that an assumption made that awards a discount/variation received is erroneous; *or*
- knowingly make a false declaration as to the non-occupation of a dwelling in order to benefit from a discount/variation or avoid an increase in council tax liability.

A penalty may be collected by the local authority by including it on your council tax bill (see p191) or sending a separate bill.<sup>91</sup> Details of penalties should be included on the bill, along with general information.<sup>92</sup>

If the local authority sends a separate bill, it must allow at least 14 days for it to be paid. If the imposition of a penalty is subject to an appeal or, in England and Wales, arbitration:<sup>93</sup>

- no bill can be issued for the recovery of a penalty;
- no amount is payable in respect of the penalty.

### Grounds on which a penalty may be quashed by a tribunal

You may not be liable to a penalty if you have a reasonable excuse for not notifying the local authority. What is reasonable depends upon the facts and the individual circumstances and a tribunal will not readily infer that you should be subject to a penalty in circumstances where there is no criminal intent, wilfulness or recklessness. The words 'reasonable excuse' should be given their plain and ordinary meaning without unnecessary embellishment and include whether there are circumstances beyond your control or not.<sup>94</sup> Tax avoidance aimed at reducing liability should not be confused with tax evasion and the fact that a

billing authority does not believe you does not amount to proof of factual wrongdoing.<sup>95</sup>

The proportions of the instalments on the bill attributable to the penalty are not payable until the appeal or arbitration is finally disposed of, abandoned or fails for non-prosecution.<sup>96</sup>

If a penalty is paid and is later quashed either by the local authority or following an appeal, the local authority must repay it. This can be done by deducting an amount from any other penalty, council tax and, in Scotland, Scottish Water charges that are owed to the local authority and repaying any balance.<sup>97</sup> In deciding to impose a penalty, the local authority is expected to act reasonably and proportionally.<sup>98</sup> A penalty may be quashed if it is disproportionate in the circumstances but that does not mean a tribunal may not make an adverse finding against an appellant on other issues under appeal.<sup>99</sup>

If the penalty is excessive compared with the matter complained of, or unreasonable in the circumstances (eg, if you are terminally ill or have mental health issues), you should appeal to the valuation tribunal or valuation appeal committee in Scotland.

A complaint can also be made to the Ombudsman (see p294).

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## **8. Appeals against the amount of the bill**

If you do not agree with the calculation of the amount you are liable to pay, you should write to the local authority. This can be done with both actual and estimated amounts.<sup>100</sup> Explain which decision you believe to be incorrect and why – eg, because a disability reduction has not been awarded.

The local authority has two months in which to consider the representations made. If it fails to respond in writing within the two-month period, or if you are still dissatisfied with the response, an appeal can be made to the valuation tribunal or via the local authority to a valuation appeal committee in Scotland. This should normally be done within four months of the date the grievance was first raised with the local authority.

An appeal cannot be made on the basis that any assumption the local authority is required to make about the future may prove to be inaccurate.<sup>101</sup>

The council tax bill should normally still be paid while the appeal is outstanding, subject to any agreement made with the local authority. However, if the local authority has applied for a liability order in the magistrates' court, apply for an adjournment of the liability order hearing if a formal appeal is underway.<sup>102</sup>



## Notes

### 1. Who must pay the bill

- 1 **EW** Reg 22 CT(AE) Regs; *R (on the application of Waltham Forest LB) v Waltham Forest Magistrates' Court* [2008] EWHC 3579 (Admin); CO/2347/2007  
**S** Reg 18 CT(AE)(S) Regs
- 2 **EW** Reg 2(3) CT(AE) Regs  
**S** Reg 19(2) CT(AE)(S) Regs
- 3 **EW** Reg 2(4) CT(AE) Regs
- 4 **S** Reg 18 CT(AE)(S) Regs
- 5 **EW** Reg 28 CT(AE) Regs

### 2. When bills should be issued

- 6 **EW** Reg 19 CT(AE) Regs
- 7 **S** Reg 17 CT(AE)(S) Regs
- 8 **EW** Reg 18 CT(AE) Regs  
**S** Reg 19 CT(AE)(S) Regs
- 9 **EW** Reg 18 CT(AE) Regs
- 10 Reg 6(1) WSSD(CUCLA)(S)O
- 11 Reg 6(3) WSSD(CUCLA)(S)O
- 12 **EW** Reg 19 CT(AE) Regs
- 13 *Encon Insulation Ltd v Nottingham City Council* [1999] RA 382
- 14 *North Somerset DC v Honda Motor Europe Ltd; North Somerset DC v Chevrolet United Kingdom Ltd; North Somerset DC v Martin Graham* [2010] EWHC 1505 (QB)
- 15 *R (on the application of Waltham Forest LB) v Waltham Forest Magistrates' Court* [2008] EWHC 3579 (Admin); CO/2347/2007
- 16 *Regentford Ltd v Thanet DC* [2004] EWHC 246 (Admin); [2004] RA 113 (QBD)
- 17 *Morgan v Warwick DC* [2015] RVR 224
- 18 Ombudsman Report 13019622, Derby City Council, 30 October 2014

### 3. How the bill is calculated

- 19 **EW** s2(2)(d) LGFA 1992  
**S** s71(2)(d) LGFA 1992
- 20 **E** Reg 14 CT(AE) Regs  
**W** Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2017 No.41
- 21 **EW** Reg 20 CT(AE) Regs  
**S** Reg 20 CT(AE)(S) Regs
- 22 **S** Reg 20 CT(AE)(S) Regs

- 23 **EW** Reg 20 CT(AE) Regs  
**S** Reg 20 CT(AE)(S) Regs
- 24 **EW** Regs 24 and 25 CT(AE) Regs  
**S** Regs 23 and 24 CT(AE)(S) Regs
- 25 **EW** Reg 24 CT(AE) Regs 1992
- 26 Reg 27(4) CT(AE)(S) Regs
- 27 **E** Regs 21A and 21b CT(AE) Regs
- 28 **EW** Regs 24, 25 and 31 CT(AE) Regs  
**S** Regs 23, 24 and 27 CT(AE)(S) Regs
- 29 **EW** Regs 24, 25 and 31 CT(AE) Regs  
**S** Regs 23, 24 and 27 CT(AE)(S) Regs
- 30 **EW** Regs 24, 25 and 31 CT(AE) Regs  
**S** Regs 23, 24 and 27 CT(AE)(S) Regs
- 31 **EW** Reg 24 CT(AE) Regs  
**S** Reg 23 CT(AE)(S) Regs
- 32 **EW** Reg 55 CT(AE) Regs
- 33 *Lone v LB Hounslow* [2019] EWCA Civ 2206

### 4. How bills are served

- 34 *Regentford Ltd v Thanet DC* [2004] All ER (D) 285
- 35 **EW** Reg 2 CT(AE) Regs  
**S** s192 Local Government Scotland Act 1973; regs 1(3) and 20 CT(AE)(S) Regs
- 36 **EW** Reg 17(4) CT(AE) Regs
- 37 s7 Interpretation Act 1978
- 38 *R (on the application of Clark-Darby) v Highbury Corner Magistrates' Court* [2001] All ER (D) 229
- 39 *Chowdhury v Westminster City Council* [2013] EWHC 1921
- 40 *Myers v Elman* [1940] AC 282; *Cranfield and another v Bridgegrove Ltd; Claussen v Yeates; McManus v Sharif; Murphy v Staples UK Ltd; Smith v Hughes and another* [2003] EWCA Civ 656 CA; judgment of District Judge Madge, Peterborough Crown Court Case No. S20120266, 29 November 2012 – process server jailed for contempt
- 41 *Sharpe v Wakefield* [1888] 22 QBD at 239

### 5. Information the bill should contain

- 42 **E** Schs 1 and 2 CT(DN)(E) Regs
- 43 Sch 1 para 18 CT(DN)(E) Regs 2011
- 44 Sch 2 paras 2-6 CT(DN)(E) Regs
- 45 **E** Sch 2 CT(DN)(E) Regs  
**W** CT(DN)(W) Regs

- 46 **E** Reg 19(1)(a) CT(DN)(E) Regs 2011  
**W** CT(DN)(W) Regs
- 47 **E** Reg 19A CT(DN)(E) Regs 2011  
**W** Sch 1 para 8A CT(DN)(W) Regs
- 48 Reg 5 and 6 CT(DN)(E) Regs 2011
- 49 Schs 1 and 2 CT(DN)(E) Regs 2011
- 50 Reg 5(2) CT(DN)(E) Regs 2011
- 51 Reg 2(4)A CT(AE) Regs
- 52 Reg 2(4C) CT(AE) Regs
- 53 Sch 1 paras 13 and 14 CT(DN)(E) Regs
- 54 Council Tax Information Letter, 13 September 2018
- 55 *McGrath v Camden LBC* [2020] Bus LR 64
- 56 Reg 7 CT(DN)(E) Regs 2011
- 57 s16 LGFA 1992
- E** Reg 4C CTNDR(DN)(E) Regs
- W** Reg 5 CT(DN)(W) Regs
- S** Reg 29 CT(AE)(S) Regs
- 58 *McGrath v Camden LBC* [2020] EWHC 369 (Admin) QBD; *S5HD v SM (Rwanda)* [2018] EWCA Civ 2770
- 59 Reg 21A(S) CT(AE) Regs
- 60 Reg 21A(3)(a) CT(AE) Regs
- 61 Reg 21A(2) CT(AE) Regs
- 62 Reg 21A(3)(b) CT(AE) Regs
- 63 s52ZH LGFA 1992

## 6. Payment arrangements

- 64 **EW** Reg 21 and Sch 1 Part I CT(AE) Regs  
**S** Reg 21 and Sch 1 CT(AE)(S) Regs
- 65 **S** Sch 2 para 19 LGFA 1992
- 66 **EW** Sch 1 Part I CT(AE) Regs
- 67 **EW** Sch 1 Part I CT(AE) Regs  
**S** Sch 1 CT(AE)(S) Regs
- 68 Sch 1 para 2(3B) CT(AE) Regs, as inserted by reg 2(14) CT(AE)(A)(No2)(E) Regs
- 69 Sch 1 Part I CT(AE)(S) Regs
- 70 **E** Reg 21(1A) CT(AE) Regs
- 71 Sch 1 para 27 LGFA 1992
- 72 s11A LGFA 1992; para 2(3A) and Sch 1 CT(AE) Regs
- 73 **EW** Sch 1 Part I CT(AE) Regs  
**S** Sch 1 Part I CT(AE)(S) Regs
- 74 **EW** Sch 1 Part I CT(AE) Regs  
**S** Sch 1 Part 1 CT(AE)(S) Regs
- 75 **EW** Sch 1 CT(AE) Regs
- 76 **E** Reg 21(1C) CT(AE) Regs
- 77 **EW** Sch 1 Part II LGFA 1992
- 78 Sch 2 para 19 LGFA 1992
- 79 **EW** Reg 28 CT(AE) Regs
- 80 **EW** Sch 1 Part III CT(AE) Regs  
**S** Sch 1 Part II CT(AE)(S) Regs
- 81 **EW** Sch 1 Part III CT(AE) Regs  
**S** Sch 1 Part II CT(AE)(S) Regs
- 82 **EW** Sch 1 Part III CT(AE) Regs  
**S** Sch 1 Part II CT(AE)(S) Regs

- 83 **EW** Sch 1 Part III CT(AE) Regs  
**S** Sch 1 Part II CT(AE)(S) Regs
- 84 **EW** Sch 1 Part III CT(AE) Regs  
**S** Sch 1 Part II CT(AE)(S) Regs
- 85 **S** Reg 24 CT(AE)(S) Regs
- 86 **EW** Sch 1 Part III CT(AE) Regs  
**S** Sch 1 Part II CT(AE)(S) Regs
- 87 **EW** Sch 1 Part III CT(AE) Regs
- 88 **EW** Reg 21 CT(AE) Regs  
**S** Reg 21 CT(AE)(S) Regs
- 89 **EW** Reg 25 CT(AE) Regs  
**S** Reg 24 CT(AE)(S) Regs
- 90 **EW** Reg 26 CT(AE) Regs  
**S** Reg 25 CT(AE)(S) Regs

## 7. Penalties

- 91 **EW** Reg 29 CT(AE) Regs  
**S** Reg 26 CT(AE)(S) Regs
- 92 Sch 1 CCTNDR(DN)(E) Regs
- 93 **EW** Reg 29 CT(AE) Regs  
**S** Reg 26 CT(AE)(S) Regs
- 94 *World of Enterprise Ltd v Revenue and Customs* UKFTT 719(TC)
- 95 Appeal Nos.0665M130018/254C and 0665M132093/254C of the VTE sitting at Warrington, 16 October 2014
- 96 **EW** Reg 29 CT(AE) Regs  
**S** Reg 26 CT(AE)(S) Regs
- 97 **EW** Reg 29 CT(AE) Regs  
**S** Reg 26 CT(AE)(S) Regs
- 98 *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223
- 99 *Taxpayer v Warrington BC* [2015] VTE Appeal No.MO137634, 21 December 2015

## 8. Appeals against the amount of the bill

- 100 **EW** s16 LGFA 1992  
**S** s81 LGFA 1992
- 101 **EW** Reg 30 CT(AE) Regs
- 102 *Wiltshire Council v Piggin* [2014] EWHC 4386 (Admin)

# Chapter 10

## Enforcement

**This chapter covers:**

1. Introduction (below)
2. Statutory enforcement in England and Wales (p206)
3. Liability orders (England and Wales) (p209)
4. Recovery methods (England and Wales) (p222)
5. Statutory enforcement in Scotland (p243)

### 1. Introduction

This chapter describes the statutory enforcement process. This is the way in which the local authority can recover unpaid amounts of council tax. The process in Scotland is different from the one in England and Wales. Some elements, however, such as the ability to make deductions from certain benefits, are common to both systems.

The local authority can agree a special payment arrangement with you (see p199). The rescheduling of payments under such an arrangement may often be the most appropriate response if you are in arrears. Non-payment of any amount due under a special payment arrangement is also covered by the statutory enforcement procedure. **Note:** if you do not keep to the agreement, the local authority can commence recovery.

Certain enforcement functions can be performed on behalf of the local authority by an outsourced subcontractor but not the power to make applications to commit a debtor to prison. This can only be done by the local authority.<sup>1</sup>

**Note:** at any point in the enforcement process, recovery action must stop if the outstanding amount (including costs) is paid.

CPAG's *Debt Advice Handbook* is available free-to-view at [AskCPAG.org.uk](http://AskCPAG.org.uk). It contains information about many of the enforcement actions described in this chapter.

## 2. Statutory enforcement in England and Wales



### **Council tax collection protocol and local authority enforcement policies**

*Collection of council tax arrears good practice protocol*, issued by the Local Government Association and Citizens Advice, promotes good practice in the recovery of council tax and co-operation between billing authorities and advice agencies, including the use of enforcement agents, but does not refer to other enforcement methods such as bankruptcy and charging orders.<sup>2</sup> The full protocol can be found at [citizensadvice.org.uk](http://citizensadvice.org.uk).

Local authorities should also have their own written debt collection policies which they should publish and are expected to adhere to.<sup>3</sup> Failure to have a written policy on the use of bankruptcy is very likely to be maladministration.<sup>4</sup> A local authority is at fault if it states it has, or will, suspend enforcement action but continues it.<sup>5</sup> In some cases, this may arise because enforcement functions have been delegated to outsourced contractors (for whom the council is responsible and is required to monitor).



The actual policy adopted by a billing authority is generally a matter for the authority itself. The absence of a requirement to conduct proper checks for vulnerability or assistance from adult social care before resorting to enforcement methods such as bankruptcy have been considered maladministration.<sup>6</sup> The Ministry of Housing, Communities and Local Government announced in June 2020 that it is working towards improving best practice guidance for the collection and enforcement of council tax.<sup>7</sup>

## **Reminder notice**

If the council tax bill has been correctly issued but you fail to pay an instalment (see p195), the local authority issues a reminder notice, giving the estimated or chargeable (final) amount.<sup>8</sup> The reminder notice requires payment to be made within seven days.<sup>9</sup> It must include:

- a note of the instalment, or instalments, that have not been paid;
- a statement informing you that if payment is not made to cover any instalments that are overdue, together with any which will become due within seven days, the right to pay by instalments is lost and the full year's tax becomes payable after a further seven days.

This reminder also acts as a notice of impending enforcement action. If a reminder is issued and you fail to pay within seven days, the local authority does not need to issue another notice before it applies to court for a liability order (see p209).

If two reminders are issued during the financial year, the next time you miss a payment you automatically become liable for the whole of the outstanding amount of the year's tax. No further reminder is required.<sup>10</sup> You should be informed of the consequences of a third failure to pay on the second reminder notice.<sup>11</sup>

## **Final notice**

A final notice is required if the local authority has issued a reminder notice on two occasions in the same financial year and you have failed to pay an instalment on time. A final notice is also required if only one payment is due under a demand notice. It should state every amount that the local authority would seek on a liability order (see p209), unless that amount is the same as that on the second reminder.<sup>12</sup> In the case of joint taxpayers, a final notice may be addressed to all of them.<sup>13</sup> In all cases, once the outstanding amount has become payable following a reminder, or after seven days following a final notice, the local authority can seek a liability order from the magistrates' court (see p209).<sup>14</sup>

## **Joint liability**

If a bill has been issued in joint names, the local authority can seek to recover the unpaid amount from anyone who is jointly liable. If a joint bill has not been

issued, the authority must send a notice to those who are jointly liable but who have not previously been issued with a bill before any recovery action can be taken against them. The jointly liable person must be given at least 14 days in which to pay the bill. If s/he does not then make a payment, a reminder must be served on her/him. If payment is not received after seven days, an application may be made to a magistrates' court for the issue of a summons for a liability order and a further 14 days must be given between any summons and hearing where a liability order may be granted (see p209).

It is possible to apply for a liability order solely against the person to whom the bill was originally sent (even if a joint bill has not been sent), or against both that person and another person(s) who is (or are) jointly and severally liable with that person. It is not possible for a summons to cover more than one person – separate summonses are needed.

## **Write-offs and payments**

While local authorities normally pursue debts until they are recovered, in certain instances it may be appropriate for a local authority to consider writing off a debt which is not cost effective to pursue or in a case of particular financial hardship. It may, for instance, be appropriate to write off liability if a person dies soon after the start of the financial year and so only had a small liability.

Some local authorities may deny they have any power to write off a council tax debt, but section 13A(1)(c) of the Local Government Finance Act 1992 allows an authority to reduce a sum that may be owed in council tax as it thinks fit. This power can be used where a reduction has already been awarded under the local authority's council tax reduction scheme.<sup>15</sup> The reduction may be granted regardless of when the liability arose.<sup>16</sup> A wider power also exists which would allow the write-off of any sum under the general financial powers of a local authority in law.<sup>17</sup>

## **Outstanding liabilities on death**

Liabilities owed by a person who has died may be recovered from her/his estate.<sup>18</sup> The billing authority is required to serve a notice requiring payment of the sum in respect of the alleged liability. Such a sum is enforceable in the administration of the estate as a debt of the deceased person and no liability order need be sought. The executor or personal representative may challenge the alleged liability in an appeal to the valuation tribunal or to another court if proceedings are commenced in respect of the debt. Overpayments of council tax may be recovered by the executor.<sup>19</sup>

The executor or administrator cannot be liable her/himself for the debt, nor may any other relative or beneficiary of the deceased be pursued. No liability to pay arises unless the executor or administrator is first served with a demand.

If the billing authority is unaware that the person has died, enforcement action may have been commenced in the usual way (see p206). In this situation, court and other costs incurred after the death are not enforceable. The imposition of any costs should be challenged.<sup>20</sup>

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### **3. Liability orders (England and Wales)**

A liability order issued by a magistrates' court provides a local authority with a variety of options to recover the amount of council tax owed (see p222). It is not a judgment debt for the purposes Part 70 of the Civil Procedure Rules or the Magistrates' Court Act 1980. This means it cannot be enforced as a judgment debt in the County Court or High Court.<sup>21</sup> The higher courts have expressed concern that the Civil Procedure Rules, which apply in other civil courts, do not apply in magistrates' courts where liability orders are issued.<sup>22</sup>

A local authority must follow the rules on billing, as an order cannot be obtained if it has not issued a reminder or final notice, as described on p207. Before applying for a liability order, the local authority should, as a matter of good practice, carry out checks to see whether you:

- are entitled to a reduction under its council tax reduction (CTR) scheme (see Chapter 8);
- have made a claim for CTR which has yet to be processed (see p210);
- have appealed or are seeking a review (see Chapter 11);
- are owed a refund for previous period;
- have made a claim for a discretionary reduction (see p177).

Some local authorities fail to carry out sufficient checks and there are frequently failures by local authorities to communicate adequately between the council tax department and the section handling CTR. The problem is particularly acute where council taxpayers move in and out of low-paid jobs, relying on benefits during periods of unemployment. Delays in awarding discounts or CTR and delays by the DWP in awarding social security benefits, can all result in many people being wrongly recorded as council tax debtors. Because the enforcement process is effectively governed by a computer program, a failure to award CTR or an exemption – however caused – results in the automatic commencement of enforcement proceedings and costs and penalties added to bills.

If any of the above circumstances apply, the local authority should suspend recovery action until benefit entitlement has been determined or an appeal decided and should consider refunding these charges.

Considerable effort may be needed to persuade relevant officers of the local authority (or the employees of any company employed by the billing authority if outsourcing collection) to suspend recovery proceedings. Where possible you should consider appealing (see Chapter 11), although it can take time to obtain a

hearing. The local authority may be willing to make an alternative payment arrangement with you in return for withdrawing proceedings. Many local authorities will still wish to obtain a full liability order as this gives them the ability to enforce payment if the arrangements are broken. If the local authority does not act reasonably and a summons is issued, go into the court, tell the magistrates what has happened and ask for an adjournment.

## **If your council tax reduction has yet to be determined**

If you receive a summons before your application for CTR has been determined, apply to the magistrates' court for an adjournment of the hearing (see p216).

Under the previous council tax benefit (CTB) system, the view of some local authorities was that a person was liable for the full amount of the council tax demanded by the local authority, and a magistrates' court could order payment. In a community charge (or poll tax) case, it was decided that the magistrates' court could grant a liability order, despite the fact that a claim for community charge benefit had been made and the local authority had failed to determine the claim within the statutory period. In court, local authorities often seek to rely on this case.<sup>23</sup>

The decision to seek a liability order, however, is a discretionary one.<sup>24</sup> Consequently, the local authority must consider the relevant facts of the individual case and not act in an unreasonable manner.<sup>25</sup> A magistrates' court may decline to issue the order if the local authority has not determined a reduction either under the authority's scheme or an application for a discretionary reduction for persons in financial need (see p177).

The decision to issue a summons is also a discretionary matter which has to be exercised reasonably; even though the process is controlled by computer programs, it remains a legal decision, not a technical operation. If a local authority seeks a liability order knowing that a CTR claim is pending, it is possible to argue that this constitutes an unreasonable exercise of the local authority's discretionary power. Furthermore, pensioners on low incomes should have up to 100 per cent of their liability covered by CTR, and some help should be given to others on low incomes. So, it is arguable that parliament did not envisage that such support systems should be undermined by making liability orders in the magistrates' courts with the imposition of costs. Such a case can clearly be made in the case of pensioners – eg, a pensioner who is entitled to the guarantee credit of pension credit. Arguably, the function of the local support system is to provide support for local taxpayers, not to create debt.

A test of 'substantial prejudice' to the taxpayer caused by delays on the part of the local authority has been applied in cases of bills and summons which are issued late.<sup>26</sup> Arguably, substantial prejudice may arise to a council taxpayer where a summons is sent early, before CTR has been determined, as well as when a bill and summons have been sent out late and it is no longer possible to apply



for any CTR. Loss of CTR because of the rules preventing backdating, which would otherwise have been payable, is also an example of prejudice. Other examples of prejudice include losing a right of appeal or having to move home or being unable to meet other payment demands.

It may also be possible to use human rights law to object to a liability order if a sum has yet to be calculated. The European Court of Human Rights considers that there must be clarity in orders and judgments issued by courts.<sup>27</sup> If a liability order is made, but CTR entitlement is still to be determined for the year ahead, the amount ultimately due is uncertain, and may be revised. However, the matter has yet to be tested.

## Readjusted bills

It is often unclear on what basis a readjusted bill has been issued, particularly if it is several years after the initial period of liability. This may cause particular problems for people who may have been entitled to CTB before April 2013 or who are entitled to CTR but whose circumstances change.

If a readjusted bill is served, request an explanation for the readjustment. Experience suggests this may cause the local authority to re-examine the amount being claimed. Be prepared to take an appeal to a valuation tribunal to challenge any readjustment, particularly if CTR has already been awarded.

If a discretionary reduction is refused, or there is no lawful basis for a bill which the local authority persists in trying to enforce, you should attend court and challenge the bill before the magistrate and argue that either you have paid your liability for the year in question or you have been caused prejudice.

### *Have you been caused prejudice?*

The issue of a late bill which has caused prejudice is a defence to an application to make a liability order. In *North Somerset District Council v (1) Honda Motor Europe Ltd and (2) Chevrolet United Kingdom Ltd and (3) Martin Graham*,<sup>28</sup> the local authority delayed sending out bills for local taxes payable between 2002 and 2007. The High Court accepted the argument that the failure to serve the business rates as soon as practicable after 1 April in the relevant financial year rendered the notices invalid.

The court held that no duty existed on the taxpayer to pay the rates until a correct demand notice was served. Relevant factors to be considered are the length of the delay and the prejudice to the taxpayer which could arise in any number of ways.

Prejudice is considered different from inconvenience and must be 'substantial' and certainly not technical or contrived. There was also countervailing public interest in the collection of taxes, the interests of other taxpayers and the revenues of the local authority concerned which had to be examined by the court.

The judgment shows that the courts will look beyond the simple failures to serve notices and consider both the overall conduct of the local authority and the impact that defects in procedure may have on taxpayers.

Significantly, the court recognises (paragraph 34) that the defendants are entitled to raise an issue of invalidity by way of defence at both the magistrates' court and as an administrative decision: 'Had the Council sought to enforce the notices by way of complaint in the Magistrates' Court the same defence could have been raised.'<sup>29</sup> This means that an objection should be made before the magistrates' court.

## Time limits

An application for a liability order from the magistrates' court must be made within six years from the date the bill was issued.

Once a liability order has been made, there is no time limit on how long the local authority may take to enforce it. In *Bolsover District Council and another v Ashfield Nominees Ltd and another*, a local authority was allowed to use insolvency proceedings against a company where a liability order had been obtained more than six years earlier. However, it is possible that an attempt to enforce a liability order that is more than six years old might be considered an abuse of process and unreasonable in law if the taxpayer is an individual.

If a local authority is seeking to enforce liability from an earlier year, the Valuation Tribunal for England (VTE) or the Valuation Tribunal for Wales (VTW) still has jurisdiction to determine the matter. If there have been extensive delays, this may be considered maladministration and you can complain to the Ombudsman (see p294). If bills and reminder notices are served late, liability order proceedings based on them may be dismissed by the magistrates' court if prejudice can be shown (see p185). A discretionary reduction under section 13A of the Local Government Finance Act 1992 might be used to cover a late claim of liability where other benefits or reductions are not available (see p177).

The Ombudsman has ruled that delay was not acceptable where a local authority claimed a liability order for a debt but could not prove it because it had lost the relevant paperwork.<sup>30</sup> The Ombudsman considered that if a debt is properly owed, there is no injustice resulting from delays in recovering that debt, but the case was different because the council was unable to provide documents in support of its claim.

That there exists a limit, in the interests of justice, as to how long delay may be tolerated is shown by a decision under the old rating system.<sup>31</sup> The Court of Appeal held it was unjust for a local authority to have delayed for 12 years before pursuing a local tax demand, with the liable person-entitled to bring judicial review proceedings in the High Court.

## Obtaining a liability order

To obtain a liability order, the local authority must apply to the magistrates' court for a summons to be issued to you. In practice, this is issued by computer and

endorsed with a facsimile signature of a justice of the peace. The decision to seek a summons must be in accordance with the regulations and be a reasonable one.<sup>32</sup>

Regulations state that a summons may be addressed to two or more joint taxpayers in joint names, but natural justice would require that separate summonses should be issued against each defendant, in order to give each person notice of the hearing. If a single reminder is issued to two or more people who are jointly and severally liable, the local authority should produce separate summonses for each person against whom a liability order is to be sought.

The summons instructs you to attend the court to show why you have not paid.<sup>33</sup> No warrant can be issued for your arrest if you do not appear. In practice, most people who have been summonsed do not attend and the 'hearing' takes place in their absence. You should have reasonable notice of the hearing as there must be at least 14 days between serving the summons and the hearing at which the liability order is made.<sup>34</sup>

The summons is not a prescribed form, but should set out the amount outstanding. It may also include the costs reasonably incurred.

From 1 January 2020, summonses in England and Wales no longer need to be signed by the justice of the peace or justices' clerk. This may raise a question of the validity of the summons as to whether it has been properly issued by an authorised person, removing a safeguard that the summons is produced with lawful authority. Instead, the individual issuing it must be recorded by the 'designated officer'.<sup>35</sup> This is a clash with the regulations which require a justice of the peace.

## The costs for issuing a liability order

In England and Wales, the cost of issuing the summons was set at £3 in 2013 and reduced to 50 pence per defendant from 2018.<sup>36</sup> However, the amount charged by councils varies dramatically for what is essentially an identical and almost fully automated procedure.<sup>37</sup> This is likely to be in breach of the intention of the regulations, which allow only permitted costs which are 'reasonable'. For costs to be reasonable, an explanation as to how they have been calculated should be available. The inflated sums being charged are further likely to be a breach of the legal and constitutional requirement that statutes must precisely set out the basis for charging any sum or amount. It has been held that a local authority must not attempt to raise revenue in the absence of a statutory authority to do so.<sup>38</sup>

In many cases there may be an arguable case that costs being claimed by the local authority may be unlawful.

The costs of the application are divided into two stages: those reasonably incurred before and after a hearing. If you pay before the hearing, these costs are separate to those which are reasonably incurred after the hearing and the making of an order and they should be lower.<sup>39</sup>

You should query other amounts included in the costs on a summons and with making the application to establish why they have been incurred. The costs claimed by a local authority on a summons can sometimes be up to £125 or more, and the legal basis of these costs is unclear. You should demand to know the legal basis of, and calculation of, any costs above 50 pence. You can do this before the hearing, and if the local authority does not agree to reduce or drop the costs, the matter may be raised in court. The authority is required to provide a breakdown of costs claimed in seeking the liability order if requested in court.<sup>40</sup>

The magistrates have a discretion to award costs and may reduce them if they consider they are unreasonable. If you are successful in the magistrates' court, a limitation may be imposed upon an award of costs against the local authority, which means you may not be able to successfully recover the money incurred in defending the claim.

In Wales, the maximum that may be charged in costs when seeking a liability order is £70.<sup>41</sup>

### **Challenging the costs of a liability order**

The costs of applying for a liability order may be challenged if they are unreasonable. The magistrates must be satisfied that the costs are reasonable and properly incurred and cannot simply grant any sum the local authority is asking for.<sup>42</sup>

In *Nicolson v Tottenham Magistrates' Court*, it was held that the debtor was entitled to know the basis on which costs had been awarded and an explanation of the sums. The question of costs is a mixture of fact and law. Magistrates may only award costs where they are satisfied that:<sup>43</sup>

- the local authority has actually incurred those costs; *and*
- the costs were incurred in obtaining your liability order; *and*
- it was reasonable for the local authority to incur them.

The court ruled:

'It is clear that there must be a sufficient link between the costs in question and the process of obtaining the liability order. It would obviously be impermissible (for example) to include in the costs claimed any element referable to the costs of executing the order *after* it was obtained, or to the overall administration of council tax in the area concerned.'

This means that only the essential costs of obtaining the liability order in the court are recoverable. Simply because a local authority claims an item on a document described as a 'bill of costs', it does not mean it can be included as costs incurred in obtaining a liability order.

Items on any costs bill should be examined closely, distinguishing between costs which arise for administration (eg, computers, offices, wages of staff or sending out bills and reminders) and those which are actually required in making the application to court before the magistrates. There has to be a sufficient link



between the costs and the application to be recoverable.<sup>44</sup> The legal costs must also relate to the actual legal steps for the liability order, not to any other type of legal proceedings – eg, the cost of obtaining warrants against debtors in committal proceedings which have fixed-cost schemes of their own.

If a local authority offers an estimated sum in costs, based upon figures in previous years and divided up among debtors, it should submit the information to the clerk and court and also make it available to you.<sup>45</sup> Having demonstrated a causal link, the council must show that costs were reasonably incurred. For magistrates to reach a proper judgment, it is necessary for the council to provide sufficient information as to how the figure was arrived at, and what ‘costs’ it represents; and it is necessary for the court to have enough information with which it can be satisfied that the costs were incurred in obtaining the order and not for anything else.

## Serving the summons

A summons may be served, giving at least 14 days’ notice, by:<sup>46</sup>

- posting it to your usual or last-known place of abode; *or*
- delivering it to you; *or*
- leaving it at your usual or last-known address; *or*
- in the case of a company, leaving it at, or posting it to, its registered office; *or*
- leaving it at, or posting it to, an address given by you as an address at which service will be accepted.

If you do not receive a summons for a liability order hearing and the magistrates’ court makes the order in your absence, the order may be quashed by the High Court on judicial review.<sup>47</sup> If a summons is not served, any liability order purportedly based upon it is invalid.<sup>48</sup>

## Withdrawal of the summons

A summons can only be withdrawn by the court. The power to withdraw a summons is inherent in the powers of the court, and a summons, once issued, cannot be withdrawn by the local authority which is a party to the case.<sup>49</sup> A summons may be withdrawn by the justices’ clerk if both you and the council agree. If a party does not agree to the withdrawal, it can only be withdrawn by a magistrate after both parties have been heard in court.

## Payment of the outstanding amount

If the outstanding amount, plus costs, is paid, the local authority cannot continue with the application for a liability order.<sup>50</sup> If the amount outstanding has been paid or CTR awarded but the costs have not, a liability order can still be made for the costs alone, although the local authority may be prepared to forego these.<sup>51</sup> If

the delay has arisen through the action or inaction of the local authority, the authority may be prepared to waive the costs.

## **Payment of liabilities for previous years**

If you have existing liabilities (eg, you owe money for several years), always specify the year for which you are making the payment, and include a letter or cheque endorsed with the relevant financial year. This will avoid the problem of the local authority applying the sum to different years and leaving outstanding debts.

## **Adjournments**

You can apply to the court for an adjournment if, for instance, you have an arguable case that you should be exempt, if you should be receiving CTR or if there is a matter that should go as an appeal to a valuation tribunal (see p259). This is done by writing to the justices' clerk.

In some courts, the task of listing and adjourning proceedings is carried out by the local authority for reasons of administrative convenience. This raises questions of natural justice, since there is no power in law to delegate the functions and duties of the court to a party to the case.

The grant or refusal of an adjournment is a judicial act and should be exercised fairly.<sup>52</sup> If a court fails to consider an application for an adjournment, any decision may be quashed by judicial review to the High Court.<sup>53</sup> A complaint should also be lodged with the court concerned, and it is advisable to contact your MP.

A sample letter for applying for an adjournment can be found in Appendix 3.

If you do not receive a reply from the magistrates' court, telephone the listing department of the court to enquire about what is being done. You can also go to the court to make an application to the court.

## **Attending court**

If the matter cannot be adjourned, you will have to attend court if you wish to make representations. This is strongly advised if your debt is over £5,000 and there is a risk of the local authority seeking to enforce by bankruptcy as the issue of a liability order will be taken as the basis for enforcement activity. The duty advice scheme for solicitors at magistrates' courts is not available for liability order hearings but should be available if a billing authority applies at a later date to have you committed to prison (see below).

If you attend court the local authority may try to reach an agreement or settlement with you. In some cases, the local authority will agree to withdraw the application, but it is more common for it to insist on getting a liability order to rely on if the agreement is not kept. This also enables the local authority to obtain more in costs.

Most local authorities normally send officials to court to negotiate with taxpayers outside the court room. This can provide an opportunity to discuss any problems that have arisen and to negotiate and reach a solution. In some cases, the local authority may agree to withdraw the liability order application, but any agreement should be in writing. It may be advisable to go into the court room following such an agreement to ensure that this is done formally with notice given to the court. You will be in a stronger position to negotiate if you have already applied for an adjournment in writing to the court. In some cases, the local authority will agree to withdraw the sum in costs, though it may insist on obtaining a liability order. You should ask for an explanation of the costs if they exceed 50 pence, and the authority should provide a breakdown (see p213).

Often the local authority will agree to suspend the liability order application on terms that require you to repay the money or agree an adjournment if there is a matter being appealed to the valuation tribunal. This agreement should be obtained in writing.

## The hearing

If it is not possible to reach a settlement, or you wish to challenge the basis of the local authority's case as to why you have not paid, there must be a hearing.

You are entitled to be present and hear the case against you and to speak in your defence. The burden of proof is on the local authority to demonstrate that it has complied with the rules of billing, not upon you to show why you have not paid. If you are prevented from either addressing the court or seeing the evidence, the hearing will be a breach of natural justice and you are entitled to appeal as the hearing was not fair.

The procedure for the hearing follows rule 14 of the Magistrates' Courts Rules 1981. You should be allowed an opportunity to examine all the evidence produced by the local authority and ask questions in cross-examination. The court normally must comprise two justices of the peace or a single magistrate, now known as a district judge.<sup>54</sup> You may make a submission of 'no case to answer' if the local authority has failed to prove an essential part of its case. If the submission of 'no case to answer' succeeds, the local authority is not entitled to a liability order.

## Representatives

You can represent yourself without a legal representative. In addition, you have the right to have the assistance of a friend – eg, an adviser who is not a lawyer.<sup>55</sup> Such a person can sit with you in court and help by taking notes, prompting and giving you advice on the conduct of the case. S/he is known as a 'McKenzie friend'. It is sensible to mention to the court that such an adviser is present at the earliest opportunity. Anyone considering attending court as a McKenzie friend should read the practice guidelines available at [judiciary.uk](http://judiciary.uk). The court may also

exercise a discretion to allow a non-lawyer to represent an otherwise unrepresented person, but only if it is in the interests of justice.<sup>56</sup>

#### Grounds for granting a liability order

An order must be made if the magistrates are satisfied that:<sup>57</sup>

- the sum is payable by the person concerned; *and*
- it has not been paid.

The local authority must satisfy the court that:

- the council tax has been fixed by the local authority; *and*
- the sums have been demanded in accordance with the regulations; *and*
- full payment of the amount due has not been made by the required date; *and*
- a reminder, second reminder or a final notice has been issued; *and*
- the sum has not been paid within seven days of the reminder or final notice being issued and the full amount has become payable; *and*
- the summons has been served for the amount outstanding at least seven days after the reminder or final notice; *and*
- the full sum claimed has not been paid.

The defences available to you include:

- the amount has not been demanded in accordance with the regulations – eg, the local authority failed to follow the correct time periods in serving bills and reminders;
- the authority has issued two bills for the same amount;
- bills have been issued late (see p211 and Chapter 9);
- instalments have not been calculated in accordance with the regulations (see Chapter 9);
- the amount has been paid;
- you are not the person named on the summons;
- the level of council tax is not in accordance with the sum set by the local authority;
- the hearing is being held less than 14 days following the issue of the summons;
- you have properly requested to pay by instalments in accordance with the statutory scheme but the local authority has failed to comply with requirements and issued a summons.<sup>58</sup>

An appeal to the VTE/VTW (see p260) may be raised in liability order proceedings – eg:<sup>59</sup>

- whether or not you are a liable person;
- whether or not the dwelling is a chargeable dwelling;
- with regard to entitlement to a disability reduction;
- with regard to entitlement to a discount or exemption.



However, there are two High Court conflicting decisions on this point and the High Court may decide to follow which it prefers.<sup>60</sup> Practices can vary greatly between courts, but if there is evidence of a serious objection to liability, many courts will adjourn the proceedings. A local authority which acts unreasonably in refusing payment at the liability order stage may be penalised in costs if an appeal has to go to the High Court.<sup>61</sup>

The case for an adjournment may be strengthened if you have lodged an appeal with the VTE/VTW.<sup>62</sup> Unless agreed in advance, an application for an adjournment must be made in the courtroom directly to the bench on the 'return day' of the summons. Wherever possible, contact the court in writing to seek an adjournment, and also inform the local authority.

## Evidence

The local authority can use any statement contained in a document, including a computer-generated statement, provided:<sup>63</sup>

- the document forms part of a record compiled by the authority;
- direct oral evidence of any fact stated in it would have been admissible;
- if the document has been produced by a computer, it is accompanied by a signed certificate validating that the computer was operating properly.

The local authority officer presenting the case should be asked to produce the certificate for inspection. Failure to do so will make the computer evidence inadmissible and the local authority will be unable to prove its case in court.<sup>64</sup>

Your direct evidence, given as a witness, is admissible, together with any other documents or statements.<sup>65</sup> Notice of any document used or any other hearsay statement<sup>66</sup> (ie, a statement made by any person not called as a witness in court) must be given to the clerk and the local authority. These rules are complicated and place you at a disadvantage, as they require notice to be given to the clerk at least 21 days before a hearing, whereas you may only receive 14 days' notice of a summons. However, one possible way around this problem is to serve copies of any documents on the local authority so that they become records held by the local authority (which are acceptable). Alternatively, in many cases the local authority will have had notice of the documentary evidence more than 21 days before a hearing – eg, where correspondence has been ongoing over CTR. If there has been a history of maladministration of billing and reminder notices by the local authority, the magistrates' court may order staff from the billing authority to explain what has happened. In exceptional circumstances, the High Court may also order the local authority to reconsider a benefit application from an earlier year on judicial review.<sup>67</sup>

## **The liability order**

The court may make a liability order for one person for one amount. It can also make one liability order for more than one person and more than one amount in the form of a schedule.<sup>68</sup>

**Note:** the form (Form A) originally provided to draw up liability orders was removed from law from 10 July 2003 in Wales and 1 October 2003 in England and no form has been substituted in its place.<sup>69</sup> Without any written record of its order or judgment being issued by the court, an order from a magistrates' court may be invalid.<sup>70</sup> This point has been raised in proceedings at various magistrates' courts since August 2015 and has yet to be resolved. The failure by parliament to create the necessary form is a serious flaw in the legislation which potentially compromises the making of all orders and enforcement activity. It is clear that parliament envisaged magistrates making a physical liability order as the basis for taking of any further enforcement action, including any further steps in the court which have to be based upon a judgment or order – eg, bankruptcy.

A liability order is meant to identify the aggregate amount that can be recovered, including the costs, but it is unclear how this can be achieved if a magistrates' court does not make a liability order in writing and only purports to issue the liability order orally. If the full sum claimed has been reduced (eg, because CTR has been awarded), the liability order will be for a greater sum than the amount payable. In such cases, the order remains in force and the excess amount should be treated as paid. If, following the issue of an order, you owe more than the amount specified, the local authority can only enforce up to the limit stated in the order. It must seek a new order to enforce the outstanding balance. However, if no proper stamped and sealed order is drawn up and issued by the court, then effectively the local authority may not be able to establish that any such order exists or existed at any stage, nor show that the magistrates were ever satisfied that the local authority had proved all the matters it is required to prove.

In practice, the courts seldom issue individual liability orders; the judge or chair of the magistrates normally just signs a certificate attached to the list of non-payers, but in a form that does not comply with the regulations – without the stamp or seal of the court or any form laid down in regulations since 2003 (see above).

This is a serious flaw in proceedings identified by the Court of Appeal.<sup>71</sup> Until 2012, many courts did not keep any proper record of liability order hearings or the orders issued, leaving local authorities to maintain records which could be wrong and incapable of independent verification. This has also been identified as a serious omission in enforcement by the High Court.<sup>72</sup>

The lack of an adequate and independent record may be a breach of human rights under Article 6 of the European Convention on Human Rights, regarding the process of determining the civil rights and obligations of a citizen.<sup>73</sup>

## Setting aside a liability order

It is possible for a liability order to be 'set aside' – ie, the court quashes or cancels the order and the local authority cannot take enforcement action. A local authority can apply to a magistrates' court to have a liability order quashed, on the basis that it should not have been made.<sup>74</sup> If the court decides that it would have granted an order for a lesser sum, it may make a liability order for a lesser sum together with the costs reasonably incurred in obtaining the order. The local authority must issue a summons for a new amount within six years.

One potential drawback for the council taxpayer is that the right to quash the order is wholly reliant on the local authority's being willing to make the application. Unreasonable refusals to quash liability orders could be challenged by judicial review. A complaint of maladministration may also be made (see p294). In the meantime, you remain subject to the order.

If the magistrates' court has acted 'in excess of jurisdiction' (ie, if it has made an order that it had no power to make), you can ask it to set aside the order.<sup>75</sup> For example, the High Court ruled that magistrates were wrong not to have quashed three liability orders made between 1996 and 1998 against an applicant who was unaware of the proceedings until January 2004.<sup>76</sup>

The High Court ruled that the following apply when deciding to set aside a liability order.<sup>77</sup>

- There must be a genuine and arguable dispute about the liability to pay.
- There must have been substantial procedural error, defect or mishap for the liability order to have been made.
- The application to set aside was made promptly after the defendant had notice of its existence.

'Promptly' is usually interpreted as within three weeks of you learning about the liability order (some leeway exists if you have a disability). Cases in which liability orders have been made years earlier and in which the debtor, after learning of them, fails to apply for months or years to apply to set aside will be unsuccessful because of lack of promptness.<sup>78</sup>

There is no prescribed form for making an application to set aside a liability order but a letter can be sent to the court's clerk identifying the liability order and requesting a hearing to consider setting it aside.<sup>79</sup> This is crucial if a local authority is seeking to enforce a liability order through bankruptcy proceedings unless the matter is also being challenged through the valuation tribunal (see p236). Therefore, it may also be necessary in order to lodge an appeal with the VTE/VTW. See Chapter 11 for more information on appeals. Costs may be awarded to the successful party if a set-aside application is contested.<sup>80</sup>

In terms of the procedure with a set aside, a High Court judge has stated:<sup>81</sup> '...in my view, and what should happen in future cases where liability orders are obtained which should not have been because summonses were not properly

served, is as follows. The claimant should notify both the justices and the council that the summonses were not properly served.... The council should then inform itself as to whether or not the claimant's assertion that the summonses were not properly served was true or not. A degree of cooperation would clearly be required between the claimant and the council.'

The Court went on to state: 'If in a simple case such as this the council accepts that the person upon whom the summonses were served, and in respect of whom liability orders were made, was not properly served and is not liable, then the council should so indicate in correspondence to that person. Where that person is not content to accept the assurance of the council that the liability orders will not be enforced, and wishes to have them set aside, then the council should join in a request to the magistrates to set aside the orders.'

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## **4. Recovery methods (England and Wales)**

The liability order gives the local authority the power to:

- obtain information about your financial circumstances and thus assess the best course of recovery action (see below);
- make an attachment of earnings order (see p223);
- make an attachment order on an elected member's allowances (see p226);
- apply to the Department for Work and Pensions (DWP) for deductions to be made from your universal credit (UC), income support (IS), jobseeker's allowance (JSA), employment and support allowance (ESA) or pension credit (PC) (see p226);<sup>82</sup>
- use enforcement agents (previously known as bailiffs) to take control of your goods (see p227);
- apply for a charging order against the dwelling in respect of which the debtor's liability arose (see p236);
- apply to bankrupt you (see p236).

The local authority may decide which recovery method it wishes to use in each case, and may use it more than once, but it may not pursue more than one method at any one time.<sup>83</sup> In the case of joint liability, it may pursue only one person at a time.<sup>84</sup> So if, for example, one of the joint taxpayers is the subject of an attachment of earnings order (see p223), the local authority cannot take control of the goods of the other.

### **Providing information**

Once the liability order has been made and for as long as the amount in question remains unpaid,<sup>85</sup> the local authority may request you to provide the following information:



- the name and address of your employer;
- your earnings or expected earnings;
- statutory deductions from pay (these must be disregarded when calculating the amount to be deducted under an attachment of earnings order);
- your payroll number;
- details of existing attachment of earnings orders;
- details of other sources of income – eg, occupational pension, benefits;
- whether there is anyone jointly liable for the whole, or any part, of the amount for which the order was made.<sup>86</sup>

You do not have to supply the information if the request is not made in writing, or if the information is not in your possession or control.<sup>87</sup> Similarly, you are not required to provide any information which is not prescribed by the regulations – eg, the number plate of a vehicle you may own. Otherwise, you must provide the information within 14 days of the request being made.<sup>88</sup> You do not, however, have to advise the local authority of a change of circumstances unless it makes a fresh request for the relevant information, but you do have to inform it about any change in your circumstances as regards your ongoing liability (see Chapter 5) and entitlement to council tax reduction (CTR – see Chapter 8). If a liability order has been granted against people who are jointly liable, the local authority can require this information from any, or all, of them. If you fail, without a reasonable excuse, to supply the requested information, you are guilty of a criminal offence and may be fined by the magistrates' court up to a maximum of level 2 (£500).<sup>89</sup> If you 'knowingly or recklessly' supply false information, you could be found guilty of a criminal offence and fined up to a maximum of level 3 (£1,000).<sup>90</sup>

## Attachment of earnings order

An attachment of earnings order requires an employer who is paying wages, statutory sick pay (SSP) or an occupational pension to deduct some of it and make payments to the court to meet a debt. A local authority with a liability order against you may arrange to have standard deductions made from your earnings in this way.<sup>91</sup> Certain costs arising from unsuccessful enforcement activity may also be recovered by an attachment of earnings order.

Attachment of earnings orders are a practical and, in many cases, preferable alternative to taking control of goods (see p227). The decision to use this method of recovery, however, is a discretionary one and the local authority must consider all the relevant factors before deciding to adopt this method. Normally, the local authority offers you the opportunity to pay by instalments before using an attachment of earnings order.

A local authority cannot have more than two council tax attachment of earnings orders against a person at one time.<sup>92</sup>

In addition to each amount deducted under the attachment of earnings order, the employer can deduct a further £1 towards administration costs each time a deduction is made.

### **The order**

The attachment of earnings order must specify:

- the fact that a liability order has been obtained against you, and the outstanding sum;
- the rate at which deductions are to be made from net earnings (see below);
- the period within which each deduction made is to be paid to the local authority – ie, within 19 days of the end of the month in which the deduction is made.

The order must be signed by the proper officer at the local authority. A facsimile signature is acceptable.

Once an attachment of earnings order has been made, it remains in force until:

- the whole amount to which it relates has been paid; *or*
- it is cancelled by the issuing authority.<sup>93</sup>

The local authority may cancel the order on its own initiative or following an application by you or your employer.<sup>94</sup>

### **Notifying employment changes**

While an attachment of earnings order is in force, you must notify the local authority in writing if you leave a job or become employed or re-employed.<sup>95</sup> This notification must be given within 14 days of the day on which you leave, start or recommence the employment, or (if later) the day on which you are informed by the local authority that the order has been made.<sup>96</sup> If you do not comply, without a reasonable excuse, you commit an offence and may be fined.<sup>97</sup> If you make a statement which you know to be false, you may also be found guilty of an offence.<sup>98</sup>

### **The deductions to be made**

The deductions under an attachment of earnings order are made from your net earnings.<sup>99</sup> The amount deducted depends on the payment period. If you are not paid weekly or monthly, or are paid on an irregular basis, a daily rate is used. Special rules cover more unusual payment arrangements. You can agree with the local authority and your employer a lower deduction than the statutory amount. Your employer should alter the deductions if your earnings change.

'Earnings' include any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary, or payable under a contract of service. They also include SSP.<sup>100</sup> The following are not treated as earnings:<sup>101</sup>

- social security benefits (including UC) and tax credits;

4. Recovery methods (England and Wales)

- allowances payable for disablement or disability;
- sums payable by any public department of the government of Northern Ireland or of a territory outside the UK;
- pay or allowances payable to a member of the armed forces;
- wages paid to a seaman, other than of a fishing boat.

'Net earnings' are defined as the gross earnings minus:<sup>102</sup>

- income tax; *and*
- class 1 national insurance (NI) contributions; *and*
- amounts deducted towards a superannuation scheme; *and*
- tax credits.

**Deductions from weekly net earnings<sup>103</sup>**

Monthly	Weekly	Daily	Deduction rate
Up to £300	Up to £75	Up to £11	0%
£300.01 to £550	£75.01 to £135	£11.01 to £20	3%
£550.01 to £740	£135.01 to £185	£20.01 to £27	5%
£740.01 to £900	£185.01 to £225	£27.01 to £33	7%
£900.01 to £1,420	£225.01 to £355	£33.01 to £52	12%
£1,420.01 to £2,020	£355.01 to £505	£52.01 to £72	17%
£2,020.01 and over	£505.01 and over	£72.01 and over	17% of this threshold and 50% of the remainder

**Priority of attachment of earnings orders**

There is a priority for attachment of earnings orders if more than one has been made against you.<sup>104</sup> Council tax attachment of earnings orders should be dealt with one at a time and in the order in which they are made. If an order is already in force (eg, for child support arrears), a council tax order is applied to the balance of pay remaining after the other deductions have been made. If an order for council tax is in effect when another order is made, the council tax order should continue to be met and the balance considered attachable for the other order.

**Complaints about attachment of earnings orders**

The Ombudsman does not usually investigate the decision to apply for an attachment of earnings order, but may investigate maladministration in the way in which the order is carried out and errors which may arise in seeking or applying the order. An error may arise, for example, where the use of an attachment of earnings order would be considered 'disproportionate and heavy handed'.<sup>105</sup>

A council is not at fault for seeking an attachment of earnings order without your permission if you have been given the opportunity to make a settlement

arrangement but have not done so.<sup>106</sup> However, a council is at fault if it gives wrong advice on which you rely and you are denied the opportunity to make a reasonable payment offer.<sup>107</sup>

## Councillors' allowances

If you are a local authority councillor (but not a member of the Court of Common Council of the City of London or the Receiver for the Metropolitan Police District), the local authority can make an order to deduct 40 per cent from your allowances – eg, for attending meetings and for special responsibilities. The decision to use this method of recovery is a discretionary one. The local authority must consider all the relevant factors before deciding to adopt this method.

**Note:** where an elected member fails to pay an amount of council tax within two months of the due date, s/he cannot vote on any matter which influences the setting of the local authority's council tax.<sup>108</sup>

## Deductions from benefits

In England, Wales and Scotland, if a liability order (in Scotland, a summary warrant or decree from the sheriff court) has been obtained, the local authority may apply for deductions to be made from your UC, IS, JSA, ESA or PC.<sup>109</sup> The decision to use this method of recovery is a discretionary one. The local authority must take all the circumstances of the case into account before deciding to pursue it. **Note:** during the coronavirus pandemic, deductions from benefits were paused for three months from the end of March 2020.

The maximum amount that can be deducted for council tax arrears from:

- UC is 5 per cent of your monthly standard allowance – ie:

	Single	Couple
Under 25	£17.14	£24.43
One or both under 25	£20.49	£29.70

- IS, JSA, ESA or PC is £3.75 a week.

If you disagree with a decision about deductions, you can challenge it by asking for a mandatory reconsideration and then appeal.

There are also restrictions if deductions are being made for other debts. See CPAG's *Welfare Benefits and Tax Credits Handbook* for details about the rules.

Deductions from UC/IS/JSA/ESA/PC can only be made in respect of one application from the local authority at any given time. If a second application is made before the sum specified in the first application has been fully recovered, the second has to wait until the first has been cleared.<sup>110</sup>



As far as is practicable, you and the local authority should be notified of the decision in writing within 14 days. You should also be notified of your right to appeal against the decision.

When the debt has been paid, the local authority must notify the local Jobcentre Plus office within 21 days, or as soon as practicable after that.<sup>111</sup>

The DWP must notify you in writing of the total amount deducted under any application if:<sup>112</sup>

- you request this information in writing; or
- the deduction ends.

## Taking control of goods

The seizure of goods and their sale at auction to pay off a debt is a remedy that local authorities have long used in local taxation.

Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 and the Taking of Control of Goods Regulations 2013 set the rules about the taking control of goods and what enforcement agents can and cannot do. These rules govern council tax enforcement against goods.<sup>113</sup> The government prefers to refer to bailiffs as 'enforcement agents' but the term 'bailiff' remains in common use, including by bailiffs themselves.

There are several different types of enforcement agent operating in England and Wales. Some are employed as public servants and some are private agents. They all enforce liabilities by taking control of goods.

The billing authority may employ its own enforcement agents, but many use private companies of bailiffs to take control of goods as part of the range of enforcement services.

### *Taking control of good during the coronavirus pandemic*

The Ministry of Justice has published guidance entitled *Working safely during Covid-19: enforcement agents (bailiffs)*.<sup>114</sup> This guidance does not supersede any legal obligations arising from legislation and should be considered alongside the guidance in the *Taking Control of Goods: national standards*. Enforcement agents should make reasonable attempts to make contact prior to a visit to establish if anyone in the household has coronavirus symptoms, is self-isolating or has been advised to shield. If so, the visit should not take place. On visiting a property, s/he should enquire whether anyone in the household has coronavirus symptoms, is self-isolating or has been advised to shield. If so, or if the bailiff observes visible signs of coronavirus (eg, persistent cough), the bailiff should immediately withdraw and not attempt to make, or agree to make, payments. The guidance does not prohibit bailiffs from entering residential property but does require the bailiff to establish whether there is a need to enter the property at all and, if so, to assess the risks and discuss arrangements for doing so with the client. Social distancing should be maintained as far as possible and appropriate PPE should be used.

The Civil Enforcement Association's *Post-lockdown Support Plan* recommends the enforcement officers refer vulnerable people or those who have been severely financially impacted by the pandemic (eg, on statutory sick pay or job loss) for debt advice.

The rule on entry and physical seizure may be waived where the debtor has signed a controlled goods agreement issued by the enforcement agent. Consequently, an enforcement agent may enter into a controlled goods agreement within the meaning of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 with a debtor whether or not the bailiff enters.<sup>115</sup> However, if no consent is given to allowing so-called 'virtual seizure' and no agreement is signed and the enforcement agent has not entered the premises then no seizure has taken place.<sup>116</sup>

It is good practice for local authorities to consider other methods (such as attachment of earnings orders or deductions from benefits) in preference to taking control of goods as an initial enforcement option. If some other method of recovery is in force, the local authority has no power to take control of goods.<sup>117</sup>

The local authority cannot attempt to take control of goods unless you have been sent a written notice giving you a minimum of 'seven clear days' notice that a visit will take place to take control of goods.<sup>118</sup> Sundays, bank holidays, Good Friday and Christmas Day do not count in calculating the seven-day period.<sup>119</sup>

The written notice must mention all of the following specified matters:<sup>120</sup>

- your name and address; *and*
- the reference number(s); *and*
- the date of notice; *and*
- details of the liability order; *and*
- the amount of any enforcement costs incurred up to the date of notice; *and*
- the possible additional costs of enforcement if the sum outstanding should remain unpaid as at the date mentioned; *and*
- how, and between which hours and on which days, payment of the sum outstanding may be made; *and*
- a contact telephone number and address at which, and the days on which and the hours between which, the enforcement agent or the enforcement agent's office may be contacted; *and*
- sufficient details of the debt to enable the debtor to identify the debt correctly; *and*
- the amount of the debt including any interest due as at the date of the notice; *and*
- the date and time by which the sum outstanding must be paid to prevent goods of the debtor being taken control of and sold and the debtor incurring additional costs.

The seven-day notice may be served by post, fax or electronic measures, or be hand delivered through the letter box or (where there is no letter box) by affixing it to the property or the place where it is likely to come to your attention.<sup>121</sup>

## Codes of practice

The local authority is responsible for ensuring that its enforcement agents are properly authorised and comply with the law.<sup>122</sup> As well as *Taking Control of Goods: national standards* issued by the Ministry of Justice, local authorities may also have their own codes of practice, setting out rules for taking control of goods to which they are expected to adhere. If a local authority fails to observe its code of practice, this may amount to maladministration and may be grounds for a complaint to the Ombudsman (see p294).<sup>123</sup>

## Vulnerable households

Care should be taken with vulnerable households. The regulations restrict the steps that enforcement agents may take when encountering individuals who may be classed as vulnerable. The legislation does not define 'vulnerability'. However, *Taking Control of Goods: national standards* provides some detailed guidance on this. It considers you vulnerable if, because of your age, health or disability, you are unable to safeguard your personal welfare or that of other members of your household.<sup>124</sup> See p321 for examples of groups who could be considered vulnerable.<sup>125</sup> Vulnerability may be a temporary phase – eg, if you have a serious short-term illness or injury. The enforcement officer must assess the situation s/he finds at the property and make a decision on whether or not to proceed.

**Note:** taking control of goods cannot take place where a child or vulnerable person is the only person present in the dwelling where the goods are located.

## Goods

Goods are property of any description other than land.<sup>126</sup> An enforcement agent can only take control of goods which belong to you<sup>127</sup> on premises which s/he has power to enter (see p230) or which are on the highway.<sup>128</sup> If goods are jointly owned, the enforcement agent must obtain full details of the co-owner and s/he must be included in subsequent proceedings and be paid her/his share of the proceeds of any sale.

## Exempt goods

The following are exempt and cannot be taken into control:<sup>129</sup>

- your only or principal home. This can include a houseboat, tent, caravan, mobile home or vehicle if it is your home;<sup>130</sup>
- items or equipment (eg, tools, books, telephones, computers and vehicles) which you need for your employment, business, trade, profession, study or education. The total value of these items must not exceed more than £1,350;
- clothing, bedding, furniture, household equipment, items and provisions that are reasonably required to satisfy your basic domestic needs and those of every member of your household. These include:
  - a cooker or microwave, but not both;
  - a refrigerator;

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- a washing machine;
- a dining table, large enough, and enough dining chairs, to seat all members of the household;
- beds and bedding sufficient for every member the household;
- one landline telephone, or if there is no landline telephone at the premises, a mobile or internet telephone;
- any item or equipment reasonably required for the medical care of any member of the household, or for safety or security – eg, an alarm system;
- sufficient lamps or stoves, or other lighting and heating appliances to satisfy the basic heating and lighting needs of household;
- any item or equipment reasonably required for the care of a person under the age of 18, a disabled person or an older person;
- assistance dogs (including guide dogs, hearing dogs and dogs for disabled persons), sheep dogs, guard dogs and domestic pets;
- a vehicle used by a disabled person on which a valid disabled person's badge is displayed;
- fixtures – ie, things which are attached to the property, including anything which is plumbed in or forms part of the property. This includes light and electrical fittings, baths, hobs, stoves, shelves and built-in wardrobes;
- goods which are in use and their seizure would be likely to result in a breach of the peace.<sup>131</sup>

Goods belonging to children cannot be taken. Nor can items exclusively used by children, even if they may be your property.<sup>132</sup>

## Lawful entry to premises

### Time

In general, entry should only take place between 6am and 9pm on any day of the week.<sup>133</sup>

### Place

An enforcement agent can only enter a 'relevant premise' if s/he believes that it is the place, or one of the places, where you usually live, or carry out a trade or business – ie, if you are self-employed. In practice, this means the dwelling on which council tax is paid, or your principal home if you have a second home. It also means that the enforcement agent cannot enter other premises owned by relatives or neighbours unless you either reside in them or carry out a business from them.<sup>134</sup> **Note:** 'premises' can include vehicles, vessels and tents or other moveable structures. However, there is no automatic right to take control of goods on private land – eg, car parks. This can only be done with a prior court order. This means that clamping cars other than on your own drive or on the highway is not lawful.



**Virtual entry**

The rule on entry and physical seizure may be waived where the debtor has signed a controlled goods agreement issued by the enforcement agent. Consequently, an enforcement agent may enter into a controlled goods agreement within the meaning of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 with a debtor whether or not the bailiff enters.<sup>135</sup> However, if no consent is given to allowing so-called 'virtual seizure' and no agreement is signed and the enforcement agent has not entered the premises then no seizure has taken place.<sup>136</sup>

**Method of entry**

The enforcement agent must enter a property peacefully through an unlocked door or other usual entrance.<sup>137</sup> S/he should be clear as to why s/he is seeking entry to the premises. Enforcement agents cannot obtain a court order to gain entry to any property for council tax, nor can an occupier be sent to prison merely for refusing entry. You are entitled to use reasonable force in resisting agents who try unlawfully to push their way in.<sup>138</sup>

**Identification**

The enforcement agent must show evidence of her/his identity and authority to enter the premises. This can be requested before s/he enters the premises or while s/he is there.<sup>139</sup>

**Ways of taking control**

To take control of goods, an enforcement officer must do *one* of the following:<sup>140</sup>

- enter into a 'controlled goods agreement'; *or*
- secure the goods on the premises; *or*
- secure the goods on the highway; *or*
- remove the goods and secure them elsewhere.

**Controlled goods agreements**

A '**controlled goods agreement**' is an agreement under which you retain custody of the goods, but which acknowledges that the enforcement agent has taken control of them. You must not remove or dispose of the goods, nor permit anyone else to do so, before the debt is paid.

The enforcement agent may not enter into a controlled goods agreement if you appear not to understand the effect of such an agreement – eg, because of language difficulties, mental disability or mental illness.<sup>141</sup>

The agreement must be in writing and signed by you (or someone permitted to sign on your behalf) and the enforcement agent,<sup>142</sup> and must contain:

- your name and address;
- the reference number or numbers and the date of the agreement;
- the names of the persons entering into the agreement;

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- a contact telephone number and address and the hours available for the enforcement agent or her/his office;
- a list of the goods and their description, including;
  - the manufacturer, model and serial number of the goods;
  - in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; *and*
  - the material, colour and usage, and (where appropriate) any other identifying characteristic, of the goods; *and*
- the terms of the arrangement entered into for the repayment of the debt.

A copy of the signed agreement must be given to the person who signed it – and to you, if someone signed on your behalf. Where it is signed by a person authorised by you, a copy must also be provided to you by either leaving it on the premises, delivering it to your address or delivering it to any relevant premises, in a sealed envelope addressed to you.<sup>143</sup>

#### Securing the goods

Goods may be secured on premises – eg, in a cupboard, room, garage or outbuilding.<sup>144</sup> Vehicles may be immobilised, and separate rules and notice provisions apply to take goods from the highway.<sup>145</sup> The enforcement agent is responsible for keeping goods in ‘a similar condition to that which the enforcement agent found them’ and the storage must be secure and the conditions of that storage must prevent damage to or deterioration of the goods for so long as they remain in the enforcement agent’s control.<sup>146</sup>

Having taken control of the goods, the enforcement agent cannot be refused entry if s/he has to return to remove them at a later date. The enforcement agent is entitled to force entry under these circumstances, but a form notifying you should be given before any forcible entry to remove the goods is made.<sup>147</sup>

The form may be served in the same ways as an initial notice at the beginning of enforcement with the exception of the post, and the notice must be given by the enforcement agent him/herself.<sup>148</sup>

#### Removing the goods

Additional information and notice and an inventory are issued if goods are removed,<sup>149</sup> including a notice giving the date of removal of the goods to storage or for sale, the daily and weekly charges and the procedure for collection by, or on behalf of, the debtor.<sup>150</sup> However, removal of goods is rare because the prices which goods fetch at auction seldom cover enforcement or auction fees and leave the debt outstanding. Rather, enforcement agents usually prefer to obtain payment or get a controlled goods agreement.

#### Selling goods

The purpose of taking control of goods is to provide valuable security that can be realised if you fail to pay. Seizure and sale of goods, however, is rare.

Enforcement officers have a general duty to sell the goods for the best price that can reasonably be obtained. A valuation must be obtained by the enforcement officer and you (or a co-owner) should be given the opportunity to get an independent valuation if desired.

The enforcement officer must then give you written notice of the date, time and place of the sale. The minimum notice period is seven clear days before the date of sale and it must be given within 12 months. This period can be extended (repeatedly, if necessary). This gives you an opportunity to make instalment payments to discharge the debt.

**Note:** a sale cannot be completed if a third-party claim to ownership is outstanding.<sup>151</sup>

## After the sale

Immediately after the sale, the enforcement officer must provide you and any co-owner with a statement detailing the items sold and the sum received for each. It must also state how the proceeds of the sale are applied to the costs and to your debt. Any recoverable expenses incurred by the enforcement officer should be listed.

## Fees

### *Fees*

#### **Compliance stage fee: £75**

Upon receipt of an instruction from the authority, the enforcement agent must send a 'notice of enforcement' giving you a minimum of seven clear days' notice that a visit will take place to take control of goods.

This fee is payable for each liability order/warrant of control.

**Enforcement stage fee: £235** (plus 7.5 per cent of the value of any council tax debt that exceeds £1,500)

This fee becomes chargeable when the debt is not paid during the compliance stage or where a payment arrangement is broken and an enforcement agent visits the property to remove goods.

**Sale stage fee: £110** (plus 7.5 per cent of the value of the debt that exceeds £1,500)<sup>152</sup>

This fee is charged when an enforcement agent attends the premises to remove goods and arrange for the sale of goods. Additional charges may be applied relating to the removal. These include storage and locksmith's fees.

As soon as one of the above stages has started, the fee is likely to be demanded, even though all the activities covered by the stage may not have been carried out or completed. Fees should only be charged for steps actually taken.

In practice, the sums raised at auction seldom even cover the enforcement agent and auctioneer's fees or any of these charges.

Where a liability order has been made against more than one person in respect of an amount, only one compliance fee is payable and no additional charge may be imposed against the other persons. A single charge for the compliance stage is treated as the charge covering the others as well as the first named person.<sup>153</sup>

Where you fall into a vulnerable category (see p229), the enforcement agent is required to give you 'an adequate opportunity to obtain assistance and advice prior to removal of the goods'. If the enforcement agent does not do this, the enforcement stage fee is not recoverable.<sup>154</sup>

Enforcement agents can only impose the above charges, plus the outstanding amount due under the liability order. The enforcement agent and the local authority cannot charge for other matters, such as writing letters or making arrangements to pay.

Any spurious charges should be challenged, first with the enforcement agents concerned and, if that fails, with the local authority, if necessary using the local authority's formal complaints procedure. If neither succeeds, a complaint may be made to the Ombudsman who may investigate (see p294) and order a refund of any overcharged fees.<sup>155</sup> For example, where an arrangement is made with the enforcement agent and no goods taken, there is no charge for the removal of goods.<sup>156</sup>

Fees are recoverable from the proceeds of sale of the seized goods or may be paid by the local authority.<sup>157</sup> Legislation states that fees may be recovered from you but no mechanism is clearly set out to enforce payment; the legislation envisages that the sums claimed are only payable where the steps for which they are levied are actually taken, meaning that goods have to be taken away and sold at auction. In such a case, the sums are then deducted from the proceeds of sale.<sup>158</sup>

No second liability order may be sought in respect of fees alone.

You can take any dispute over the fees to the civil courts.<sup>159</sup> If you think you have been overcharged, an application may also be made in the small claims court, but you will be expected to first obtain a ruling from a valuation tribunal if the local authority disputes the amount.<sup>160</sup> For more information, see Chapter 12.

## **Return of the council tax debt to the local authority**

Some local authority finance departments claim that, once an enforcement agent is instructed, it is not possible to return the debt to the local authority. This is wrong in law as the enforcement agents are the servants of the local authority and subject to its direction, since the liability order grants a range of options to be pursued. The only powers of enforcement agents set down in the legislation are to take control of goods, not to make binding financial decisions on behalf of the authority. Furthermore, the enforcement regulations previously made it clear that money may be paid to the local authority at any time, and there is no restriction in any regulations which prevents you paying direct, to the authority.<sup>161</sup> The Ombudsman has indicated that local authorities must act appropriately and in a proportionate way when enforcing debts. If a local



authority refuses to consider taking back a particular debt from its enforcement agents, this can be challenged by a complaint to the district auditor. Informing the local authority that the matter will be sent to the auditor for investigation invariably results in the local authority reconsidering its policy and action.

## Remedies against wrongful enforcement

If you are unhappy about the conduct of an enforcement officer, you can threaten or take court action, or make a complaint. Many bailiffs now have to wear body-worn video cameras that record all visits to premises. You can ask the bailiff company to check the footage and request a copy to view yourself. This may resolve a dispute without any further action being required.

You and any third party (eg, your landlord or a relative) may take legal action in cases of wrongful enforcement against goods. The most common ground of action is when enforcement agents have taken control of the wrong person's goods, such as those belonging to a non-liable person.<sup>162</sup>

You, a creditor or co-owner of any goods are entitled to make an application to court. In a dispute about the amount of proceeds payable to the co-owner of the goods, the matter is determined by the court.<sup>163</sup>

You may take proceedings in the County Court or High Court for a remedy. The court may order:

- the goods to be returned to you;
- payment of damages to you;<sup>164</sup>
- any other remedy available to the court<sup>165</sup> – eg, an injunction.

Individual enforcement agents may have a defence to a claim if they have a reasonable belief that what was done was not in breach of Schedule 12 or the liability order was not defective.<sup>166</sup>

If harm or damage caused by an enforcement agent is valued below £10,000, a claim may be pursued through the County Court and allocated to the small claims track. For example, if you are owed money or should be paid compensation, a claim can be commenced through the County Court using Form N1, with the amount limited to a maximum of £10,000 for the small claims track. The action may proceed against the enforcement agent individually, the company employing the enforcement agent or the local authority.<sup>167</sup> The small claims track is a more attractive option, as neither side can claim for legal costs.

A complaint about the fitness to practice of an enforcement agent may be made to the County Court. A standard form known as an EAC2 is available.<sup>168</sup>

Both an enforcement company and the individual agent may be liable for damages for any wrongful acts or omissions in law. However, if an individual enforcement agent is self-employed and hired by an enforcement company may not be a liable.<sup>169</sup>

Leaflets explaining how to bring a claim in the County Court can be obtained from your local County Court or at [hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk).

## **Charging orders**

A charging order effectively secures the debt against the property in a similar way to a mortgage. This method of recovery is available if you are the owner or part-owner of the dwelling. It cannot be used if you are a tenant or licensee. If the local authority has obtained one or more liability orders and the total debt outstanding is at least £1,000, it can apply to the County Court for a charging order against the dwelling, provided it is the one that gave rise to the council tax arrears.<sup>170</sup> **Note:** a charging order cannot be used against any other property owned or occupied by you. The decision to use this method of recovery is a discretionary one. In practice, local authorities are more likely to use a charging order if you have £5,000 or more in council tax arrears. Once a charging order is in place, the local authority should not use any other remedy such as enforcement agents.<sup>171</sup> The local authority must consider all the relevant factors before deciding to adopt this method, and a local authority is likely to attract criticism if it seeks to obtain a charging order for a relatively small amount.

In deciding whether to grant a charging order, the County Court must consider all the circumstances of the case, including:<sup>172</sup>

- your personal circumstances; *and*
- whether any other person would be 'unduly prejudiced' if an order were granted.

If the debt remains unpaid, the local authority may apply to the court for the property to be sold to pay the debt. In practice, the court rarely orders the property to be sold if you or your family are living there at the time. Obtaining a charging order does mean, however, that if the property is sold or remortgaged, the local authority is potentially entitled to receive the outstanding amount from the proceeds of the sale. This is only the case, however, if there are sufficient funds remaining after any charge with a higher priority, such as a mortgage, has been met. If you have negative equity with an existing mortgage lender, the use of a charging order will not result in any recovery.

## **Bankruptcy proceedings**

If a liability order has been obtained, the (outstanding) amount on it is a debt for the purposes of bankruptcy and the local authority can apply to bankrupt you. The local authority can commence proceedings where you owe at least £5,000 (the local authority can combine all the debts you owe it – eg, rent and council tax). Before 1 October 2015, the amount for a bankruptcy debt was £750.<sup>173</sup>

The Official Receiver or an insolvency practitioner is appointed to handle your financial affairs. This person is known as the 'trustee in bankruptcy'. Bankruptcy can be requested by you or by the local authority. Bankruptcy generally lasts for 12 months, after which time you are discharged from your debt.

The only advantage to a bankruptcy order being made against you is that no other enforcement measure can be used thereafter, including imprisonment,<sup>174</sup> and it will clear other debts.

If you are facing bankruptcy proceedings, you should obtain professional advice as quickly as possible. The implications for homeowners are serious because bankruptcy can result in the loss of your home. The bankruptcy process also adds heavy legal costs which will be added to the money owed. However, bankruptcy proceedings provide a last chance to dispute council tax liability or local authority calculations. It is possible that the claim is based on an error or miscalculation – eg, if an exemption on the dwelling should have been awarded or you were not liable or you were not awarded any CTR to which you are entitled. It is useful to consider whether there are grounds for an appeal to a valuation tribunal (see Chapter 11). While a formal appeal is outstanding, the local authority should not pursue recovery action and bankruptcy proceedings should not be used.

A useful guide to bankruptcy, produced by the Insolvency Service is available at [gov.uk/government/organisations/insolvency-service](http://gov.uk/government/organisations/insolvency-service). See also CPAG's *Debt Advice Handbook* for detailed information, available at [AskCPAG.org.uk](http://AskCPAG.org.uk).

If the local authority is proceeding through the High Court you may be able to get advice from Support Through Court (helpline: 03000 810 006; [supportthroughcourt.org](http://supportthroughcourt.org)).

The Local Government and Social Care Ombudsman has repeatedly highlighted flaws in the way councils pursue bankruptcy for council tax debts,<sup>175</sup> and concern about the practice has also been raised by the higher courts.<sup>176</sup>

## Proving the bankruptcy debt

It is essential that the local authority be required to produce a copy of the liability order or prove that it exists. The High Court has indicated that it is prepared to look at whether the debt can be proved, and this may be the only option for the debtor in many cases. The problem for the local authority is that liability orders are often not properly recorded by the magistrates' court and no properly signed or sealed judgment is available (see p220). If a liability order is being relied on, the local authority must be able to prove its existence to the satisfaction of the court.<sup>177</sup>

Often the computerised bulk summoning procedures used by local authorities may not actually result in a hard copy of an individual order against a debtor being signed or endorsed by a court. If you have had no notice of liability order proceedings, request that the local authority produces the liability order.<sup>178</sup> If no liability order can be produced in a correct form which is endorsed by a signature of a justice of the peace or other court stamp, the application may fail on the grounds that the order was not properly obtained from the magistrates' court.

## **Paying the debt**

You can avoid bankruptcy by paying the debt at the stage of the final bankruptcy order, and the court may adjourn proceedings if there is a realistic chance of your raising the money – eg, by borrowing it from other sources. However, repeated adjournments are unlikely, and you may still be liable for the costs of the bankruptcy proceedings even if the council tax is paid.

## **The bankruptcy hearing**

It is essential to attend any hearing, otherwise you risk being made bankrupt in your absence. You are entitled to representation at such a hearing and the matter is covered by legal aid from 2020.<sup>179</sup> Evidence should be given by witness statement. You may raise arguments in law against being made bankrupt but, unfortunately, legal aid can be very hard to obtain until a person is already made bankrupt if your home forms part of the estate to be considered. The local authority evidence can be tested and cross-examined. The County Court may dismiss the petition if it is satisfied that you are able to pay all your debts or is satisfied:<sup>180</sup>

‘...that you have made an offer to secure or compound the amount and that the acceptance of the offer would have required the dismissal of the petition, *and* the offer has been unreasonably refused by the council. An example might be where a relative or friend might lend you the money to cover the council tax debt but the council refuses it. In determining for the purposes of this subsection the court will consider your means and liabilities.’

By the time the bankruptcy petition reaches court, it is often too late to challenge the liability order by applying to the magistrates’ court or the High Court. However, there are circumstances in which the court may look at issues regarding liability for, or the amount of, council tax.<sup>181</sup> You should also try to raise reasonable arguments previously put forward at a hearing to set aside a statutory demand. These can include if you have paid the debt, that you have a set-off or have an arguable counterclaim, that the debt does not exist or cannot be proved. The counterclaim must at least be arguable,<sup>182</sup> although the court may limit or not entertain these unless they are raising matters amounting ‘to fraud, collusion or possibly some glaring miscarriage of justice’.<sup>183</sup> This could include any wilful failure to properly serve documents which has been alleged in a number of council tax bankruptcy cases involving rates and council tax.

If a statutory demand has failed to refer to the right to have it set aside, arguments may still be raised at the bankruptcy petition stage.<sup>184</sup>

You may raise any arguments as to why you consider the liability order to be wrong in law if you have not raised them at the statutory demand stage or if you raised them in the statutory demand set-aside application and they were rejected. The High Court has stated that if a bona fide appeal had been lodged with the valuation tribunal, ‘it is extremely unlikely that an order will be made. Normally either the petition will be dismissed on the basis that there is a disputed debt, or



at least, and perhaps more usually, the court will await the outcome of the appeal.<sup>185</sup>

An adjournment might be obtained if there is a bona fide appeal that can be taken to the valuation tribunal. Such an appeal should be begun as soon as possible. An adjournment is much more likely to be granted where the taxpayer has appealed in time and a decision of the tribunal can be expected reasonably soon than if you made an out-of-time appeal.<sup>186</sup>

An adjournment may also be granted as a realistic prospect of settling the debt and should not be unreasonably refused if you have evidence of making payments or attempts at making payment. Factors that may be taken into account include a lack of legal advice or knowledge and confusion on what may be required.<sup>187</sup>

If the court is satisfied that the appeal has no real prospect of success, then the court should make a bankruptcy order. Otherwise, the court may either adjourn the petition or dismiss it depending on the circumstances, but there is no power to adjourn the petition indefinitely (general adjournment).<sup>188</sup>

### Appeals on a point of law against a bankruptcy order

Where a bankruptcy order is made by the County Court which involves an error of law, an application must be made to the High Court.<sup>189</sup> A notice of appeal must be served on the High Court at the Royal Courts of Justice in London within 14 days of the bankruptcy judgment. A practice direction about proceedings is at [justice.gov.uk/courts/procedure-rules/civil/rules/insolvency\\_pd](http://justice.gov.uk/courts/procedure-rules/civil/rules/insolvency_pd).

You have to provide details of the County Court which made the order, as well as details of the local authority and a copy of any judgment. You are required to obtain a transcript of the hearing and a skeleton argument and chronology (the requirement to serve these with the notice of appeal may be waived if you are unrepresented, although you will be required to do this later).<sup>190</sup>

The High Court may grant a stay on the bankruptcy proceedings until your appeal is heard. If you have already been made bankrupt in the County Court and your home is at risk, you may be eligible for legal aid assistance. The appeal should provide grounds of appeal, explaining where the County Court judge erred in law by granting the bankruptcy petition. Grounds of appeal may include that the local authority could not produce a valid liability order or the evidence does not prove the case or there has been a material irregularity during the proceedings.<sup>191</sup> A petition may also be dismissed if it is an abuse of process in being for an extraneous purpose.<sup>192</sup>

### Annulment and rescission of bankruptcy orders

Once the bankruptcy order has been made, you may apply to have it annulled – ie, cancelled by the court if relevant grounds exist. A right to apply for an annulment of an existing bankruptcy order exists under the Insolvency Act 1986.

Annulment may be justified where:<sup>193</sup>

- the local authority cannot provide a proper account;

- the local authority has failed to follow its own criteria;
- the local authority could have pursued other recovery methods;
- there is a failure to serve documents;
- it is disproportionate in the circumstances;<sup>194</sup>
- the amount of the debt has been paid.<sup>195</sup>

The application goes to the court that made the order, and the Official Receiver must be sent a copy. An alternative remedy may be the rescission of the bankruptcy order.<sup>196</sup> Specialist advice should be sought on these issues.

#### Adjournment of the bankruptcy petition

In *Okon v London Borough of Lewisham*, the court held that the judge at the hearing of a bankruptcy petition ought to have adjourned the bankruptcy petition so as to await the outcome of the claimant's appeal to the valuation tribunal against liabilities.<sup>197</sup>

One issue is whether there has been proper service of a bankruptcy petition by the petitioning creditor which the debtor only became aware of after the making of the bankruptcy order (perhaps they only understood the significance of improper service on receipt of legal advice). Local authorities typically employ outside agents and insolvency practitioners. There have been a growing number of complaints arising about failures of service of notices in other Council tax proceedings, involving bankruptcy or charging order cases.<sup>198</sup>

Failure of service of documents where a debtor has moved away or even never lived in or occupied a property may be an issue. If you do not get served with key legal documents in council tax cases, it is very serious and needs a legal response. Knowing about the case against you is crucial to getting justice. The defendant or debtor must know about a case against him/her and at least have an opportunity of attending. There have been growing criticisms of this practice. Instead of using the post, these documents get served personally by a process server.

Additionally, any deliberate failure serving documents will be a contempt of court or perjury because the process server or solicitor has misled the court.

#### Imprisonment

England is the only country in Europe in which a person can be sent to prison for not paying a local tax. There is no imprisonment for failure to pay council tax in Wales and Scotland. **Note:** Wales removed the power to imprison a council tax debtor on 1 April 2019. After this date, billing authorities may not use or renew an application to commit a debtor to prison.<sup>199</sup>

In certain circumstances, English local authorities can apply to the magistrates' court for a warrant committing a debtor to prison.<sup>200</sup> This is a coercive measure designed to extract payment from someone who has the means to pay the debt. It is not a punishment for failure to pay or imposed as a deterrent.<sup>201</sup>

A warrant of commitment may only be sought where the local authority has been informed that an attempt to recover the debt by way of enforcement agents seeking to seize has been unsuccessful. If it appears to the authority that (for whatever reason) no or insufficient sums can be recovered, the local authority may proceed to seek committal. If there has been no attempt to seize goods, imprisonment is not available.

Where a local authority employs a subcontractor to undertake any of its functions in collecting and enforcing council tax, it must issue a notice to the subcontractor stating all relevant functions being performed for the authority are to cease and no other enforcement steps should be taken.<sup>202</sup>

The maximum period of imprisonment is three months,<sup>203</sup> but this should be reserved for only the most extreme cases, such as deliberate non-payment.<sup>204</sup>

If you are unable to pay and are threatened with imprisonment, contact the local authority immediately in writing, setting out the financial problems which you are experiencing, and ask the local authority to use its power under section 13A(1)(c) of the Local Government Finance Act 1992 to reduce or remit the debt where there is poverty (see p177).

## Means inquiry

The court must examine your means before issuing a warrant to commit you to prison (a 'means inquiry'). This involves questioning you about your circumstances, income, outgoings, debts and savings to discover the reason for your failure to pay. To enable such an enquiry to take place, you may be summoned to appear before a magistrates' court.<sup>205</sup>

A warrant to commit you to prison is only issued if the court is satisfied that failure to pay is due to:

- your wilful refusal – eg, you deliberately decide not to pay even though you are able to; *or*
- your culpable neglect – eg, you have spent available income on non-essential items rather than paying your debt;<sup>206</sup> *and*
- you have the means on the day of the hearing to pay the debt.<sup>207</sup>

If magistrates do not hold a proper means inquiry, the proceedings are unlawful and any order committing you to imprisonment may be quashed on appeal to the High Court. Magistrates are expected to properly assess your means and not to make unreasonable or irrational assumptions. If you are in receipt of means-tested benefits, point out that your financial circumstances have already been assessed and found to be limited. Separate findings of liability must be made in respect of liability orders from different years.<sup>208</sup>

There have yet to be any decisions in relation to UC in the context of committal, but previous caselaw indicates that deductions from benefits should be considered as an alternative.

A typical error of many means enquiries is to fail to ask the debtor if s/he has any savings or capital. A lack of accessible savings or capital is likely to mean that you lack the ability to pay the sum immediately. If you cannot actually pay on the day because you simply do not have enough money, the warrant should not be issued<sup>209</sup> as the purpose of committal is coercive and not intended as a punishment or as a deterrent to other non-payers.<sup>210</sup> This principle also applies to any decision to issue a warrant which has previously been suspended on terms. Magistrates should not simply assume that a failure to keep to an order is a result of wilful refusal.<sup>211</sup>

Only a failure by you to pay council tax which is 'blameworthy' is considered to be wilful refusal or culpable neglect. If you are unable to pay council tax because you are too poor, or the failure arose through illness, job loss, a domestic disaster such as a fire or flood, unexpected pregnancy, being forced from a property as a result of domestic violence, or a failure to pay benefit, you should not be at risk of imprisonment. In such cases, an application should be made by the court to remit the debt (see p243).

If wilful refusal or culpable neglect is found, the decision to issue a warrant must still be a reasonable one. A debtor is often asked to make an offer of payment. If a viable offer has been made, magistrates should accept it and not issue the warrant.<sup>212</sup> Similarly, as a matter of law where there is evidence of serious ill-health and the defendant is not present in court, justices should be slow to commit a person for civil debt in the absence of conducting any further investigations.<sup>213</sup>

### ***Mothers with young children***

The provisions of the Human Rights Act 1998 apply to imprisonment for debts recoverable in magistrates' courts. In *R (Stokes) v Gwent Magistrates' Court*, the High Court held that the decision to jail a young mother for 12 days for owing £455 was an infringement of Article 8 of the European Convention on Human Rights (right to family life).<sup>214</sup> Magistrates' courts, therefore, have to consider whether the proposed interference with the rights of the children is in proportion to the amount of debt involved.

Committal proceedings for default on local taxes have often involved mothers with young children and the disproportionate nature of imprisonment has been expressed in other cases. Arguably, in every case where someone could be imprisoned, the effect on family life must be considered. There would seem to be very few cases where a warrant of commitment would be justified or proportional, particularly with the availability of deductions from benefit and attachment of earnings orders.<sup>215</sup> The courts have also indicated that imprisonment is inappropriate where the amounts concerned are small.<sup>216</sup>



### **Remission of the debt**

If you are unable to pay or the debts are very old, the magistrates' court can remit the debt, in part or in full.<sup>217</sup> The council tax debt is extinguished for the financial year in question, but liability remains for subsequent years.

Magistrates should remit part of the debt if an order to pay instalments would result in an unreasonably long repayment period.<sup>218</sup> Any period in excess of three years is considered unreasonable.<sup>219</sup> However, the court may choose to postpone the warrant to a specific date (if it appears that the payment level will not achieve payment within three years) and conduct a review at that time to see if repayment should be increased or reduced.

Once the magistrates have set a term of imprisonment, however, there is no power to remit. Therefore, if your circumstances deteriorate and you can no longer pay the amounts ordered, you should tell the court, which can simply postpone the issue of the warrant indefinitely, without any payments being ordered. Alternatively, a warrant may be quashed by the High Court if the means enquiry has been defective so that a warrant based on it is invalid.<sup>220</sup>

### **Challenging a decision to imprison**

A decision to imprison can be challenged by appealing by way of a case stated appeal (within 21 days) or by judicial review (within three months).<sup>221</sup> In practice, if the warrant of commitment has been issued and you are already in prison, judicial review is the preferred route of appeal, as the High Court can grant immediate bail to an imprisoned debtor, pending the full appeal hearing. Local authorities are expected to file witness statements or at least supply details of what led to the committal application and the High Court expects, when challenged, that they should set out fully what they did and why, so far as is necessary, fully and fairly to meet the challenge.<sup>222</sup>

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## **5. Statutory enforcement in Scotland**

The enforcement system for local taxes in Scotland varies greatly from that in England and Wales. Enforcement in Scotland has been subject to far less scrutiny and clarification by the higher courts and council tax debtors have suffered a wide range of difficulties.

Individuals may be unaware that local tax debts are owed and are suddenly faced with large bills with no apparent warning. There have been several reported incidents of former occupiers of premises receiving a summary warrant for council tax for a period during which they were not occupying rented accommodation. Despite the individual having advised the landlord that the tenancy had terminated and that the premises had been vacated, all in terms of the lease, the landlord may have simply forgotten to advise the local authority.<sup>224</sup>

Unlike in England and Wales where a six-year limitation applies,<sup>224</sup> the limitation in Scotland is 20 years, but some local authorities may adopt a policy not to pursue debts for this length of time. **Note:** all liabilities under the former community charge have been extinguished.<sup>225</sup> Scottish authorities can only pursue once a bill has been issued or acknowledged. A bill must be served for a sum to be enforceable, and this can only be done retrospectively if you have either given false information or deliberately evaded payment.<sup>226</sup>

## **Reminders and losing the right to pay by instalments**

If an instalment under the statutory instalment scheme or any special agreement has not been paid by the due date, the local authority must serve a reminder notice on the liable person. The reminder notice requires payment to be made within seven days.<sup>227</sup> It must include a:

- note of the instalment(s) required to be paid and the remainder to be paid for the year;
- statement that if no, or insufficient, payment is made to cover any instalments that are, or will become, due within seven days of the issue of the reminder, the right to pay by instalments is lost and the remaining balance for the year becomes payable after a further seven days.

If two reminders have been issued during the financial year, even if you pay what you owe, you become liable for the whole of the outstanding amount following a third failure to pay, without the need for another reminder.<sup>228</sup> On the second reminder notice, you should be informed of the consequences of a third failure to pay.<sup>229</sup>

The local authority may take recovery action if any sum, including the 10 per cent statutory surcharge and civil penalties, which has become payable to the local authority has not been paid.<sup>230</sup> Additionally, if an elected member of a local authority is in at least two months' arrears, there are restrictions on her/his ability to vote on specific matters (see p226).<sup>231</sup>

## **Appeal to the valuation appeal committee**

If you dispute liability to pay, the first stage of an appeal to the valuation appeal committee must be commenced (see Chapter 11).<sup>242</sup> This operates to provide grounds to the sheriff to decline to grant an order for a summary warrant or decree while the matter is being determined. Such a letter or notice from the person held liable must be served on the local authority within 14 days of the reminder or final notice.

## **Summary warrant or decree**

If council tax, Scottish Water charges or a civil penalty are owed, the local authority can apply to the sheriff court for a 'summary warrant' or seek a 'decree'

for payment. The summary warrant allows for a special accelerated enforcement procedure.

The sheriff must grant a summary warrant if the local authority provides a certificate which contains certain prescribed statements.<sup>233</sup> The certificate must contain evidence of the following in the form of statements:

- that the person(s) specified in the application has not paid the sums which are due within Schedule 1 paragraph 8 of the Local Government Finance Act 1992;
- that the local authority has served a reminder notice on the person(s) requiring the amount due to be paid within 14 days from the day on which the notice was served;
- that this period has expired without full payment;
- that, in respect of each person on the application, either:
  - a period of 14 days has passed without her/him initiating an appeal to the valuation appeal committee because s/he disagrees with the local authority's decision that the dwelling is a chargeable dwelling, or that s/he is liable to pay the tax, or with the calculation of the amount which must be paid, including her/his entitlement to a disability reduction or a discount; *or*
  - the local authority has notified that it believes the grievance is not well founded, or steps have been taken to deal with the grievance, or two months have passed since the service of the aggrieved person's notice;<sup>234</sup>
- the amount unpaid by each person.<sup>235</sup>

If two or more people are jointly liable, the local authority may seek a warrant which shows them as jointly or individually liable for the outstanding sum.<sup>236</sup>

There is no requirement for the council or the sheriff court to give notice to you or allow an opportunity for you or any other person to make representations.

A number of legal opinions consider that the summary warrant procedure may be in breach of human rights law and open to challenge under the Human Rights Act 1998.<sup>237</sup> Article 6 of the European Convention on Human Rights guarantees a fair and impartial tribunal and the right to be represented in courts and tribunals in the determination of civil rights and obligations,<sup>238</sup> but no opportunity is given to the debtor to be heard in a summary warrant application or to independently check the contents of the statement.

In a summary warrant application, you are prevented from any opportunity to present evidence that may show the rules on billing have not been followed, that the sum has been paid or to make anything other than an application to postpone proceedings where an appeal may lie to a valuation committee (see Chapter 11), which may be possible if the debtor knows of the application.

## Providing information

If a summary warrant or decree for payment has been granted, you must provide specified information required by the local authority.<sup>239</sup> The obligation lasts for as long as any part of the relevant amount remains unpaid. You must provide:

- the name of your employer; *and*
- the address of the employer's premises where you work – if there are no such premises in Scotland, the address of any one place of the employer's business in Scotland; *and*
- your national insurance number; *and*
- details of your bank account; *and*
- the name and address of any other person(s) who is jointly liable to pay the whole or any part of the amount in respect of which the warrant or decree was granted.

The information must be supplied in writing within 14 days of the day on which the request is made by the local authority.<sup>240</sup> Failure to comply could result in a civil penalty being imposed.

### Recovery methods

The summary warrant or decree of payment authorises the local authority to recover the unpaid council tax, Scottish Water charges and civil penalties, plus a surcharge of 10 per cent of the amount owed in tax and charges which represent the costs (see p250), by either:

- an earnings arrestment (see p247); *or*
- deductions from benefits (see p226); *or*
- an arrestment and action of furthcoming and sale (see p248);<sup>241</sup> *or*
- sequestration of the debtor's assets where the debt exceeds £3,000. For more information, see [aib.gov.uk](http://aib.gov.uk); *or*
- attachment and exceptional attachment orders. **Note:** special permission is needed from the sheriff for a special attachment to seize goods.

The summary warrant is enforced by sheriff officers or messengers at arms. Their fees and expenses in connection with the warrant are charged to you.<sup>242</sup>

Most councils have arranged for sheriff officers to deliver a formal 'debt advice and information package' (DAIP) when they first communicate with the debtor. Attachment is competent only where a summary warrant has been granted and, before taking any steps to execute an attachment, a DAIP has been issued to you. The DAIP is a document or bundle of documents containing information such as where to get debt and money advice from locally.<sup>243</sup>

The DAIP provides specific legal information and if it is not sent/received, the formal recovery process will be affected. For more information, see [aib.gov.uk/debt/deal-debt/debt-advice-and-information-package](http://aib.gov.uk/debt/deal-debt/debt-advice-and-information-package).

When sheriff officers serve a document by leaving it at a household or place of business, it must be in such a way that it is likely to come to the attention of that person. It must be appropriately addressed and placed in a sealed envelope and bearing the notice: 'This envelope contains a citation or intimation from [the specific sheriff court] and sealed by the sheriff officer.'<sup>244</sup>



**Note:** sheriff officers cannot demand entry to your home unless a court order, known as an 'exceptional attachment order', has been obtained. Forced entry cannot take place unless there is a person present who is at least 16 and is not, because of her/his age, knowledge of English, mental illness, mental or physical disability or otherwise, unable to understand the consequence of the procedure being carried out.

Where a messenger-at-arms admits misconduct in writing or is found guilty of misconduct in disciplinary proceedings by the Court of Session, the individual concerned may be subject to an order imposing any of a range of penalties including suspension, removal from office or a fine not exceeding £2,500 or such a sum as prescribed by the Lord Advocate in regulations.<sup>245</sup>

In a case of misconduct involving a sheriff's officer, the sheriff may exercise similar powers. If the misconduct consists of, or includes, the charging of excessive fees or outlays, an order decerning for repayment by the messenger-at-arms of the fees or outlays, to the extent that they were excessive, must be given to the person who paid them.<sup>246</sup>

### **Challenging liability**

If you dispute your liability to or the amount the authority is asking for, challenge this as soon as possible by appealing to the appeal committee under section 81 of the Local Government Finance Act 1992 (see Chapter 11). This is particularly important where you are facing, or likely to face, enforcement action. Merely writing, or communicating with, the sheriff officers acting for a local authority about a dispute has been ruled insufficient to be a valid notice of appeal to the valuation appeal committee.<sup>247</sup>

### **Representation at hearings**

If you cannot afford a lawyer, you are entitled to be represented by another person, who need not be legally qualified.<sup>248</sup> A lay representative can appear in the Court of Session but the closed petition process nature of the summary warrant does not provide an opportunity for your case to be argued in the sheriff court. However, if a normal decree is applied for by the local authority, the opportunity to argue the case in the court will arise. The lay person must first complete a formal application to the court to obtain the appropriate approval to be heard.<sup>249</sup> The right to a McKenzie friend does not exist in Scotland.

### **Earnings arrestment**

A sheriff officer serves an 'earnings arrestment' schedule on your employer. This requires the employer to deduct a prescribed amount from your net earnings on every payday. The arrestment remains in force until either the debt has been paid in full or you stop working for the employer.

The amounts that can be seized by way of a diligence against earnings are similar to those for an attachment of earnings order in England and Wales. The

amounts are set out in the table below.<sup>250</sup> These figures do not apply to any existing diligence made before 6 April 2018, unless an employer chooses to apply them after being informed about them.<sup>251</sup>

<i><b>Net monthly earnings</b></i>	<i><b>Deduction</b></i>
Not exceeding £529.90	Nil
Exceeding £529.90 but not exceeding £1,915.32	£15.00 or 19% of earnings exceeding £529.90, whichever is the greater
Exceeding £1,915.32 but not exceeding £2,879.52	£263.23 plus 23% of earnings exceeding £1,915.32
Exceeding £2,879.52	£485.00 plus 50% of earnings exceeding £2,879.52
<i><b>Net weekly earnings</b></i>	<i><b>Deduction</b></i>
Not exceeding £122.28	Nil
Exceeding £122.28 but not exceeding £442.00	£4 or 19% of earnings exceeding £122.28, whichever is the greater
Exceeding £442.00 but not exceeding £664.50	£60.75 plus 23% of earnings exceeding £442.00
Exceeding £664.50	£111.92 plus 50% of earnings exceeding £664.50
<i><b>Net daily earnings</b></i>	<i><b>Deduction</b></i>
Not exceeding £17.42	Nil
Exceeding £17.42 but not exceeding £62.97	£0.50 or 19% of earnings exceeding £17.42, whichever is the greater
Exceeding £62.97 but not exceeding £94.67	£8.65 plus 23% of earnings exceeding £62.97
Exceeding £94.67	£15.95 plus 50% of earnings exceeding £94.67

When applying a percentage, the calculation should be done to two decimal places of a penny and the result rounded to the nearest whole penny, with an exact half penny being rounded down.<sup>252</sup>

The regulations make very specific provision for calculating percentages of both monthly and weekly earnings which should be followed to the letter.<sup>253</sup>

### **An arrestment and action of furthcoming or sale**

‘Arrestment’ is the process by which money or goods held by a third party for a debtor may be frozen. It could be applied, for example, to money held in your bank account. If your bank account details are unknown, usually bank arrestments are initiated by serving letters on the main banks. If money is identified as being held by a third party, an arrestment is served by an officer of the court in the presence of one witness and it freezes the funds. They cannot be withdrawn until

the debt has been settled. Usually, you are asked to sign a mandate authorising the release of funds equal to the arrears and costs to the local authority. Any money that remains in the account is released. If a mandate is not signed, the local authority must raise an action of '**furthercoming**' to allow arrested funds to be transferred. You cannot defend the action by disputing the debt, but you can defend it by showing that the arrestment was invalid, procedurally irregular or gained nothing.

### **Suspension of the summary warrant**

The summary warrant used for council tax upon which the diligence in question proceeded is one to which the Act of Sederunt (Summary Suspension) 1993 applies and so may be the subject of summary suspension. However, before the sheriff makes any order for summary suspension, the applicant must provide a caution (a bond) or other sufficient security for the sum of council tax, interests and security and any sum in expenses the sheriff believes should be added.<sup>254</sup>

### **Time to pay orders**

You can apply to a sheriff court for a '**time to pay order**'.<sup>255</sup> If granted, the local authority cannot seek to enforce a council tax debt while the order is in force.

The court must grant the order if it is satisfied that it is reasonable in all the circumstances to do so. It must take into account:

- the nature of, and reasons for, the debt;
- any action taken by the local authority to assist you in paying the debt;
- your financial circumstances;
- the reasonableness of your proposal;
- the reasonableness of any refusal or any objection from the local authority.

### **Sequestration and bankruptcy**

A local authority may use bankruptcy to enforce council tax under the Bankruptcy (Scotland) Act 2016.

If a local authority commences a bankruptcy petition, it must provide evidence of the debt. An application for a sequestration warrant must be able to show that the name of the person appeared – eg, by the production a certified copy of evidence used such as a certified extract of the material used at the summary warrant stage. If a local authority fails to do this and establish that the name of the person is clearly linked with the alleged debt and and summary warrant, the Sheriff may refuse the warrant of sequestration that as the petitioner had not provided prima facie evidence of any debt apart from those disclosed in the charges and, separately, as the procedures it adopted did not comply with either the underlying purposes of Schedule 8 to the Local Government Finance Act 1992 or what were now sections 2 and 7 of the 2016 Act, it should refuse to grant warrants to cite in each case.<sup>256</sup>

### Enforcement costs

The amount added to the debt is 10 per cent of the outstanding balance. The sheriff officer's fees set by the court, together with costs incurred in connection with the execution of a summary warrant, can also be charged to you once formal recovery proceedings begin through a summary warrant.

#### *Fees for Messengers at Arms and Sheriffs Officers*<sup>257</sup>

Debt	Fee
£708 or under	£100.60
over £708 and under £2,845	£155.95
over £2,845 and under £28,648	10 per cent of the appraised value

### Notes

#### 1. Introduction

- Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996 No.1880

#### 2. Statutory enforcement in England and Wales

- Citizens Advice and the Local Government Association, *Collection of Council Tax Arrears Good Practice Protocol*, October 2017
- Ombudsman Report 13004696, Plymouth City Council, 13 January 2014
- Ombudsman Report 07B10432, Manchester City Council, 22 September 2009
- Ombudsman Report 14000871, Sandwell MBC, 18 December 2014
- Report on an Investigation into Complaint No.08014087 against Brighton and Hove Council, Local Government Ombudsman [2010] BPIR 1407, 3 February 2010
- Parliamentary Answer given by Lord Greenhalgh, 23 June 2020, House of Lords, HL5705
- Reg 23 CT(AE) Regs as amended by reg 4 CT(AE)(A) Regs
- Reg 23 CT(AE) Regs

- Reg 23(2) CT(AE) Regs
- Reg 23 CT(AE) Regs
- Reg 33 CT(AE) Regs
- Reg 54 CT(AE) Regs
- Reg 34 CT(AE) Regs
- s13A(1)(c) LGFA 1992 inserted by s10 LGFA 2012
- Morgan v Warwick DC* [2015] RVR 224
- s151 Local Government Act 1972
- Reg 58 CT(AE) Regs
- Reg 58(4) CT(AE) Regs
- See reg 58(2)(b) CT(AE) Regs

#### 3. Liability orders (England and Wales)

- Powys County Council v Hurst* [2018] EWHC 1684 (Admin) 4 July 2018, per Hickinbottom J
- Insolvency Proceedings practice direction, PD 2012 13.4.3; *London Borough of Waltham Forest v Zafar* [2014] EWHC 791 (Ch), para 5
- R v Bristol Magistrates' Court ex parte Willsman and Young* [1991] RA
- Reg 34 CT(AE) Regs
- Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223



- 26 *North Somerset District Council v (1) Honda Motor Europe Ltd and (2) Chevrolet United Kingdom Ltd and (3) Martin Graham* [2010] EWHC 1505 (QB); *McGrath v Camden LBC* [2020] EWHC 369
- 27 *Hadjianastassiou v Greece* [1992] European Court Application No.12945/87
- 28 *North Somerset DC v (1) Honda Motor Europe Ltd and (2) Chevrolet United Kingdom Ltd and (3) Martin Graham* [2010] EWHC 1505 (QB)
- 29 *North Somerset DC v (1) Honda Motor Europe Ltd and (2) Chevrolet United Kingdom Ltd and (3) Martin Graham* [2010] EWHC 1505 (QB)
- 30 Ombudsman Report 13019622, Derby City Council, 30 October 2014
- 31 *R v Lambeth LBC ex parte Ahijah Sterling* [1986] RVR 27
- 32 *Ratford and Haywards (Receivers and Managers) v Northavon DC* [1986] RA 137
- 33 *Ratford and Haywards (Receivers and Managers) v Northavon DC* [1986] RA 137
- 34 Reg 35(2A) CT(AE) Regs
- 35 r98 Magistrates' Courts (Amendment) Rules 2019 No.1367
- 36 Sch 1 Magistrates' Courts Fees Order 2008; the Justices of the Peace and Authorised Court and Tribunal Staff (Costs) Regulations 2020 No.398
- 37 Study by Zacchaeus 2000 Trust and Nucleus Legal Advice
- 38 *Attfield v LB Barnet* [2013] EWHC 2089 (Admin)
- 39 Reg 34(5) and (7) CT(AE) Regs; *R (on the application of Reverend Nicolson) v Tottenham Magistrates* [2015] EWHC 1252 (Admin)
- 40 *R (on the Application of Reverend Nicolson) v Tottenham Magistrates* [2015] EWHC 1252 (Admin)
- 41 Reg 3 Council Tax and Non-Domestic Rating (Amendment) (Wales) Regulations 2011 No.528
- 42 Magistrates' Courts Fees (Amendment) Order 2013 No.1409
- 43 Reg 34(7) CT(AE) Regs; *R (on the application of Reverend Nicolson) v Tottenham Magistrates* [2015] EWHC 1252 (Admin), Mrs Justice Andrews
- 44 *R (on the application of Reverend Nicolson) v Tottenham Magistrates* [2015] EWHC 1252 (Admin), Mrs Justice Andrews paras 35-44
- 45 *R (on the application of Reverend Nicolson) v Tottenham Magistrates* [2015] EWHC 1252 (Admin), Mrs Justice Andrews paras 44-end
- 46 Reg 35 CT(AE) Regs
- 47 In *R (on the application of Clark-Darby) v Highbury Corner Magistrates' Court* [2001] All ER (D) 229, the High Court quashed a liability order where the person had not received the notice of the hearing, as it was unjust to allow the order to stand.
- 48 *Chowdhury v Westminster City Council* [2013] EWHC 1921
- 49 *DPP v Porthouse* [1988] 153 JP 57
- 50 Reg 34 CT(AE) Regs
- 51 Reg 34 CT(AE) Regs
- 52 *R v Kingston upon Thames Court ex parte Peter Martin* [1994] Imm AR 172
- 53 *Liverpool City Council v Pleroma Distribution Ltd* [2002] All ER (D) 302
- 54 Reg 2 CCCTNR(E)(MC) Regs
- 55 *R v Leicester City Justices ex parte Barrow and another* [1991] 3 All ER 935; Practice Guidance: McKenzie friends, issued by Lord Neuberger, Master of the Rolls, 12 July 2010
- 56 *O'Toole v Scott* [1965] UKFC 14; [1965] AC 939
- 57 Reg 34 CT(AE) Regs
- 58 *Evans v Caterham and Warlingham UDC* [1974] *The Times*, 29 January
- 59 Reg 57 CT(AE) Regs
- 60 *R (on the application of John Stuart Salmon) v Feltham Magistrates' Court* [2008] EWHC 3507 (Admin); *Mahendra Shah v LB Croydon* [2013] EWHC 3657 (Admin); *Wiltshire Council v Piggin* [2014] EWHC 4386 (Admin)
- 61 See *Wiltshire Council v Piggin* [2014] EWHC 4386 (Admin)
- 62 See *Wiltshire Council v Piggin* [2014] EWHC 4386 (Admin)
- 63 Reg 53(4) CT(AE) Regs
- 64 *Sutton v Islington LBC* [1997] CO/1784/94, 17 October 1997, unreported
- 65 Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 No.681
- 66 rr3-6 Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 No.681
- 67 *Norman and another v East Dorset DC* [2013] All ER (D) 153
- 68 Regs 35 and 48 and Sch 2 Forms A and B CT(AE) Regs

- 69 **E** Reg 3 Council Tax (Administration and Enforcement) (Amendment) (No.2) (England) Regulations 2003 No.2211
- W** Reg 3 Council Tax (Administration and Enforcement) (Amendment No.2) (Wales) Regulations 2003 No.1715
- 70 *R v H Sherman Ltd* [1949] 2 All ER 210 per Lord Goddard
- 71 *R (on the application of Mathialagan) v LB Southwark and another* [2005] RA 43
- 72 See *LB Lambeth v Simon* [2007] BPIR 1629, 6 June 2007
- 73 Art 6 ECHR; see also *Rommelfanger v Germany* (1989) 62 DR 151 and *Diennert v France* (1996) 21 EHRR 554
- 74 s82 LGA 2003
- 75 *Liverpool City Council v Pleroma Distribution Ltd* [2002] All ER (D) 302
- 76 *R (on the application of Tull) v Camberwell Green Magistrates' Court and another* [2005] RA 30
- 77 *R (on the application of Newham LBC) v Stratford Magistrates' Court* [2008] All ER (D) 17
- 78 *Gregory v Thames Magistrates' Court* [2019] EWHC 2125 (Admin)
- 79 *R (on the Application of Khan) v Feltham Magistrates' Court* [2017] EWHC 3042 (Admin) Cockerhill, J
- 80 s64 of the Magistrates' Court Act 1980; *R (on the Application of Khan v Feltham Magistrates' Court* [2017] n.68
- 81 *R (on the application of Tull) v Camberwell Green Magistrates' Court and another* [2004] EWHC 2780 (Admin), para 39 (Mr Justice Mitting)

## 4. Recovery methods (England and Wales)

- 82 Reg 56 Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013
- 83 Reg 52 CT(AE) Regs
- 84 Reg 54 CT(AE) Regs
- 85 Reg 36 CT(AE) Regs
- 86 Reg 36 CT(AE) Regs
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# Chapter 11

## Appeals

### **This chapter covers:**

1. Valuation tribunals and valuation appeal committees (below)
2. Matters that can be appealed (p258)
3. How to appeal (p266)
4. How appeals are dealt with (p268)
5. Appeal hearings (p273)
6. Reviews of tribunal and committee decisions (p285)

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### **1. Valuation tribunals and valuation appeal committees**

In England and Wales, appeals are dealt with by valuation tribunals. In England, appeals are heard by the Valuation Tribunal for England (VTE), and in Wales, by the Valuation Tribunal for Wales (VTW). In Scotland, appeals are heard by valuation appeal committees.

The tribunals provide a free service and cannot award costs against you. However, you do have to meet your own expenses in going to the tribunal hearing. See p258 for the matters which can be appealed.

Disputes over entitlement to a council tax reduction (CTR) in England and Wales can be dealt with by an appeal to the valuation tribunals. Scottish appeals about CTR go to the Council Tax Reduction Review Panel (see p177).<sup>1</sup>

Tribunals and appeal committees should conduct themselves in a more informal and less intimidating way than a court of law, and provide a mechanism to review and correct any erroneous decisions affecting taxpayers. They are independent of both the local authority and the Valuation Office Agency (VOA).

In England and Wales, a tribunal is usually made up of two or three members, with one of them chairing the tribunal. Tribunal members are local people serving in a voluntary capacity.<sup>2</sup> Members do not necessarily have any particular professional qualifications, but judges from the First-tier Tribunal (Social Security and Child Support) have sat in the past with the chairs of tribunals to hear appeals which involve CTR.<sup>3</sup> The administration of the tribunal is done by Valuation Tribunal Service staff from centralised offices. Tribunals in England and Wales

sometimes sit at an administrative centre, but more often may sit in a local authority building or in rooms or suites booked at hotels, conference centres and church halls.

In Scotland, a valuation appeal committee is made up of local people appointed by the appropriate sheriff principal. A committee consists of a chairperson and three to six ordinary members. Members are unpaid and independent of the assessor and the local authority. The committee is assisted by a paid secretary who is usually a lawyer.

Tribunals and committees are advised on matters of law and procedure by clerks, employed by the tribunal or committee. The clerk is your point of contact and should be able to respond to requests for advice on procedures in advance of the hearing. S/he cannot advise on the substance or merits of the appeal.

#### *Useful information and guidance*

Information on valuation matters and appeals can be found at the VOA website ([gov.uk/government/organisations/valuation-office-agency](http://gov.uk/government/organisations/valuation-office-agency)).

More information about appeals in England is at [valuationtribunal.gov.uk](http://valuationtribunal.gov.uk). This is regularly updated, with summaries of recent valuation tribunal decisions and the consolidated practice statement for the VTE.

The VTW produces guidance notes and a set of best practice protocols that provide in-depth guidance on the procedures that will be followed during the appeal process. These are available at [valuationtribunals.wales](http://valuationtribunals.wales).

The procedure for appealing council tax in Scotland is available at [gov.scot](http://gov.scot).

It is important to distinguish between appeals to the VTE/VTW and appeals that go to the First-tier Tribunal for other social security benefits, such as Department for Work and Pensions benefits, and for decisions about entitlement and calculations which were made for the council tax benefit (CTB) system before 1 April 2013.

## **The overriding objective**

In England and Wales, the valuation tribunals are part of the civil justice system and have an overriding objective to deal with cases fairly and justly. To further the objective the tribunal must:<sup>4</sup>

- exercise any power given it by law;
- apply any practice statement or direction;
- interpret any rule or practice direction to ensure that appeals proceed with due expedition.

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## **2. Matters that can be appealed**

Appeals can be on:

- valuations (see below);
- liability (see p260);
- discounts (see p260);
- disability reductions (see p260);
- exemptions (see p260);
- calculations on the amount of council tax ( see p260);
- council tax reduction decisions in Scotland (p262);
- completion notices (see p262);
- penalties (see p263);
- discretionary reductions (see p264);
- incorrect amounts payable, including attempts to impose liability for past periods.

Some issues cannot be dealt with by valuation tribunals, including those for which there is another route of appeal – eg, to the First-tier Tribunal, the magistrates' court or the High Court. If an appeal raises any topic which is outside of the jurisdiction of the tribunal, it will be struck out.<sup>5</sup>

It is important to distinguish between these different types of appeal rights because the consequences of beginning an appeal in the wrong tribunal can be serious and may need the High Court to correct errors made by lower courts and tribunals.<sup>6</sup>

In England and Wales, some matters can only be dealt with by the High Court – eg, the classes of dwellings that qualify for an exemption and the setting of the council tax.

### **Valuations**

Chapter 3 describes the way in which you can make a proposal to the listing officer/assessor to alter the valuation list – eg, to put your home in a lower band.

### **England and Wales**

If you make a valid proposal to the Valuation Office Agency, the listing officer has four months to decide whether or not to alter the list and to issue you with a decision notice. During this four-month period, you can negotiate and reach an agreement on the banding. The listing officer should discuss the proposal with you and any interested parties before issuing a decision notice. The notice states either that the listing officer agrees to alter the valuation list or that s/he rejects the proposal and no alteration is made. A letter is sent with the notice, explaining that you and any interested party have a right of appeal. The appeal must be made within three months of the date of the decision letter.



You and any interested party have three months from being notified of the listing officer's decision to appeal to the Valuation Tribunal for England (VTE)/ Valuation Tribunal for Wales (VTW).<sup>7</sup> If you do not start your appeal within three months, the tribunal president has the discretion to allow the appeal if satisfied that the delay arose because of circumstances beyond your control.<sup>8</sup>

The tribunal should aim to list the appeal within six months of receiving the appeal notice and give you not less than four weeks' notice of the hearing.

If you decide to appeal, the listing officer prepares a presentation pack. This typically includes background information relating to the case, accompanied by evidence of comparable property values. You can also present your valuation evidence.

If a listing officer believes that a proposal has not been validly made and serves an 'invalidity notice' (see p40) on you, you can appeal against the invalidity notice (within four weeks) directly to the VTE/VTW. You must serve a notice of appeal to the clerk of the tribunal with a copy of the notice. The notice must include a written statement of the following if they are not included on the invalidity notice:<sup>9</sup>

- the address of the dwelling; *and*
- the reasons for the appeal against the invalidity notice; *and*
- the names and addresses of the proposer and the listing officer.

If the listing officer reconsiders the matter and withdraws an invalidity notice after an appeal has been started, s/he must inform the tribunal.<sup>10</sup>

If the listing officer agrees to the proposal or decides to alter the list, whether or not an agreement has been reached, the list will be altered within six weeks.<sup>11</sup>

## Scotland

In Scotland, the regional assessor must refer appeals to a valuation appeal committee. There are 14 committees each covering different regions. Valuation appeal committees may be contacted at first instance via the assessor or by the secretary of the individual committee for your area. For information on appeal committees, see [scotvac.org/further-info](http://scotvac.org/further-info).

## Deciding which valuation applies

When determining a council tax banding, the VTE, VTW or valuation appeal committee applies the same valuation assumptions that were applied in the original valuation (see p29). The statutory assumptions have to be applied regardless of whether a dwelling is in single or shared ownership.<sup>12</sup>

### Example

Virat and Jamila live in a shared-ownership flat which is part of a block with 25 years remaining on the lease. The tribunal must ignore any lower value of shared-ownership properties and presume that there are 99 years left to run the lease.

Once the valuation assumptions have been applied, you must show that, on applying the correct valuation assumptions to your dwelling, a different sale price to that which the listing officer or assessor reached would be obtained. An appeal is only likely to succeed, therefore, if you can show that:

- a mistake was made in the way the assumptions were originally applied to the individual dwelling, indicating that a different value should have been reached; *and*
- the difference in value is sufficient to justify moving the dwelling into another valuation band.

Mistakes that can be taken into account include an error about the number of rooms in a property, or the size of its garden or the existence of something in the locality which would affect the property's valuation – eg, it is next to an industrial building, the nature of which is likely to bring down its value.

The VTE/VTW or valuation appeal committee is bound to follow the valuation assumptions and cannot consider whether they are wrong in law or that the regulations themselves are defective.

If your appeal covers a particularly complex, novel or contentious point of law (including principles of valuation), the case may be listed for hearing by the president or a vice-president of the tribunal.

## **Liability, exemptions, reductions, discounts and amounts**

You can appeal if you disagree with the local authority's decision that:

- someone is, or is not, a liable person, including if it is the owner of the dwelling who should be paying the tax (Chapter 5);
- a dwelling is not exempt (Chapter 4);
- a disability reduction should not be granted (Chapter 6);
- a discount should not be granted (Chapter 9);
- whether you should or should not be entitled to CTR or the amount of CTR awarded (see Chapter 8);
- the amount payable is correct;
- an existing exemption should be removed.

The right of appeal is open to a person aggrieved by a decision of the local authority about any of these.<sup>13</sup> The use of the word 'person' means that the right of appeal is not necessarily limited to the taxpayer. For example, it may be the owner or landlord of a building on which the council tax is levied and in which the actual taxpayer is resident, or the parent or guardian of a severely mentally impaired person who has been wrongly deemed liable by the local authority and is unable to appeal for themselves.

There are two stages to appeals on liability and calculation issues. The first stage involves writing to the local authority.<sup>14</sup> The letter should state the decision that is in dispute and the reason(s) for the disagreement. For example, it may be

that you have been deemed a liable person for council tax when the property in which you live is actually a house of multiple occupation where the owner should be paying the council tax. The local authority has two months in which to consider these matters and may ask for additional information. A further appeal may be made to the VTE/VTW or valuation appeal committee if the local authority:<sup>15</sup>

- rejects the appeal; *or*
- makes some changes, but fails to satisfy you; *or*
- fails to make a decision within the two-month period.

The local authority should normally inform you directly or publish information on its website of the right to take an appeal to the VTE/VTW or valuation appeal committee, but local authorities do not always do this.

It can work to your advantage if you mention your right of appeal when you start writing to the local authority. In the case of a dispute over liability, a calculation or an exemption, a letter could include the following line: 'If you have not resolved this matter to my satisfaction by (two months), I intend to appeal to the valuation tribunal under section 16 of the Local Government Finance Act 1992.'

You could send copies of correspondence with the local authority in advance of your appeal. Such a copy should be marked 'For information' and dated clearly with a letter stating that you want an appeal to be listed in the event that a settlement cannot be reached. In the event that the local authority loses the appeal letter or it is not forwarded for some reason, this will provide a record to establish it was made within the time limits. Alternatively, the correspondence can be sent electronically to the local authority, which will create an automatic receipt.

If you do not get a reply or acknowledgement from the local authority, proceed with your appeal by contacting the VTE/VTW or valuation appeal committee directly. Copies of appeal forms can be obtained from the Valuation Tribunal Service website. Also send copies of all documents you intend to use to the local authority, even though it does not reply. You can also make a formal complaint about the failure of the authority to respond (see p293).

### Example

Lucy is a single student on a four-year course. Her flat has been exempt from council tax since she started her course. During the third year of her course, the local authority removed the exemption. She writes to the local authority providing evidence of her status as a student. The local authority does not respond within two months so Lucy appeals to the valuation tribunal.

## **Chapter 11: Appeals**

### **2. Matters that can be appealed**

#### **England and Wales**

An appeal to the VTE/VTW must normally be made within:<sup>16</sup>

- two months of the date the local authority notified you of its decision; *or*
- four months of the date when the initial representation was made, if the local authority has not responded.

The tribunal president has the discretion to allow an out-of-time appeal if you have failed to meet the time limit because of reasons beyond your control.<sup>17</sup>

It is important to distinguish between appeals to the VTE/VTW and appeals that go to the First-tier Tribunal for other social security benefits, such as Department for Work and Pensions benefits, and for decisions about entitlement and calculations which were made for the council tax benefit (CTB) system before 1 April 2013.

#### **Scotland**

##### **Liability and exemption appeals**

In Scotland, an appeal must normally be made within:<sup>18</sup>

- two months of the date the local authority notified you of its decision; *or*
- four months of the date when the initial representation was made, if the local authority has not responded.

The local authority will forward your appeal to the valuation appeal committee.

##### **Council tax reduction appeals in Scotland**

To appeal a determination by a local authority about an amount of CTR, you must first seek a review by the local authority that made the determination. You should write directly to the local authority to request an internal review within two months of the determination.<sup>19</sup>

If you are still dissatisfied with the decision following a review, you have a further right of appeal to the Council Tax Reduction Review Panel (CTRRP) within 42 days of the date of the local authority notification.<sup>20</sup> You may also request a further review of a determination on an application, where your local authority has not notified you of a decision on your first request for review and more than two months have gone by.<sup>21</sup> See p177 for more details about the CTRRP.

#### **Completion notices**

In England and Wales, the local authority and, in Scotland, the assessor may issue a completion notice that states the date on which a newly erected or structurally altered property is considered to be a dwelling. While the matter can be discussed with the local authority or the assessor, an appeal can be made to the VTE/VTW or valuation appeal committee.



## **England and Wales**

An appeal on a completion notice must normally be made within four weeks of the notice being sent.<sup>22</sup> An out-of-time appeal may be allowed if you have failed to meet this time limit for reasons beyond your control.<sup>23</sup>

You, or someone on your behalf, should write directly to the clerk of the relevant tribunal.<sup>24</sup> The letter should:

- state the reasons for the appeal; *and*
- be accompanied by a copy of the completion notice.

Appeal forms are available from the relevant tribunal office. In England, you can register an appeal online at the Valuation Tribunal Service website. The clerk should notify you within two weeks that the appeal request has been received. The clerk should also acknowledge it and send a copy of the appeal letter or form to the local authority.<sup>25</sup>

## **Scotland**

An appeal to the valuation appeal committee must be made in writing to the assessor within 21 days of receiving the completion notice.<sup>26</sup> There is no power to consider out-of-time appeals. The letter should state the reasons for the appeal and be accompanied by a copy of the completion notice.<sup>27</sup> The assessor must pass the appeal to the secretary of the relevant valuation appeal committee.<sup>28</sup>

## **Penalties**

The local authority has the power to impose a penalty in certain instances if you are required to provide information but fail to do so, or you provide information which you know to be false. While the matter may be discussed with the local authority, and it has the power to withdraw the penalty, an appeal can be made to the VTE/VTW or a valuation appeal committee in Scotland. For more on penalties, see p201. Grounds on which a penalty may be quashed include where:

- the local authority already has the information;
- you have valid reasons for withholding the information – eg, on grounds of confidentiality;
- the amount of information being sought is excessive or the demand is impossible to comply with;
- the information is irrelevant or it is not within the remit of the local authority to seek.

## **England and Wales**

An appeal must normally be made within two months of the penalty being imposed.<sup>29</sup> The tribunal president has the discretion to allow an out-of-time appeal if you have failed to meet the time limit for reasons beyond your control.<sup>30</sup> The appeal is made by you, or someone acting on your behalf, by writing directly to the clerk of the relevant tribunal. The letter should state:<sup>31</sup>

## Chapter 11: Appeals

### 2. Matters that can be appealed

- the reasons for the appeal; *and*
- the date, if any, you were notified by the local authority of the penalty.

Appeal forms are available on the VTE/VTW websites. In England, you can register an appeal online at the Valuation Tribunal Service website. The clerk should notify you within two weeks that the appeal request has been received. The clerk should also send a copy of the appeal letter or form and any accompanying documents to the local authority.<sup>32</sup>

### Scotland

An appeal to a valuation appeal committee must be made by writing to the local authority within two months of the penalty being imposed.<sup>33</sup> There is no power to consider out-of-time appeals. The letter should state:

- the reasons for the appeal; *and*
- the date, if any, you were notified by the local authority of the penalty.<sup>34</sup>

The local authority must pass the appeal to the secretary of the relevant valuation appeal committee.<sup>35</sup>

### Discretionary reductions

You have a right of appeal against the billing authority's discretionary decision to refuse a reduction, or in respect of the amount of the reduction.<sup>36</sup> The right of appeal against a refusal arises regardless of whenever the actual liability to the sum arose.<sup>37</sup>

The tribunal will not simply substitute its decision for that of the local authority but will consider whether the local authority has used its powers correctly and lawfully when deciding whether to grant a discretionary reduction. Following the decision in *SC and CW v East Riding of Yorkshire Council*,<sup>38</sup> the tribunal may look at the actual facts of your appeal (eg, your financial circumstances) and substitute its own decision if it is satisfied the authority made the wrong decision. The tribunal applies principles which are similar, but wider, to those which operate in judicial review hearings in the High Court, and considers whether the local authority has made an error of law, which means its decision should be quashed.

#### *SC and CW v East Riding of Yorkshire Council*

##### Mr and Mrs W

Mr and Mrs W, an unemployed couple with no savings, applied for a discretionary reduction. The council refused it. The couple had no surplus income and, by the local authority's own calculations, there was a shortfall of £72.34 in their income to meet existing liabilities and outgoings.

In the view of tribunal, the simple fact was that there was no surplus income to meet a council tax bill and that: 'It is difficult to imagine a clearer case for discretionary assistance'. It found that Mr and Mrs W were entitled to discretionary relief and there was no plausible or rational basis for limiting that relief to 12 weeks or any other period and 'that only full remission of the residual council tax for the year makes any sense in view of the absence of any funds to meet their liability.'<sup>42</sup>

### **Mr and Mrs C**

Mr and Mrs C were also a couple in a difficult financial position who applied for a discretionary reduction. The council refused it. Mrs C was disabled and her husband was her carer. They had one dependent child, but although they were 'a household existing at the very margins of viability' and 'in extremely hard-pressed financial circumstances', there was nonetheless a very small surplus of income over expenditure, which allowed very little latitude for contingencies or emergencies. However, because there was such a surplus, there was no basis in law for interfering with the council's decision to reject the application for discretionary relief, and their appeal was dismissed.

Principles of law by which the tribunal may quash a decision to refuse a discretionary reduction include the following.

- The authority has got the facts wrong. This applies where the authority has made fundamental mistakes of fact that completely alter the nature of the decision and the way it approached the question of using its discretion.
- The authority fails to follow due process – eg, it failed to follow proper procedures determining a discretionary reduction or to look at the application properly. The authority also is expected to follow its own rules and guidance on discretionary reductions.
- The authority fails to consider the hardship test properly. The discretionary reduction is meant to include tackling hardship, and a local authority errs when it fails to give sufficient weight to this purpose.
- The authority fails to make an individual decision on your case. The local authority should look at individual circumstances and not simply apply a general policy.
- The authority fails to follow its own guidance, which will usually mean a different decision will be made.<sup>39</sup>
- The authority has acted unreasonably.<sup>40</sup> An authority may act unreasonably by:
  - failing to consider relevant facts;
  - considering irrelevant facts;
  - acting perversely or irrationally.

Failing to consider relevant facts occurs where the authority has ignored matters it should have considered when looking at your application. For example, the

local authority may fail to consider your income properly or fail to apply a means test or ignore the effect on any disability.

Taking irrelevant facts into consideration may occur where an authority refuses you a reduction over an irrelevant issue, such as your having just moved into a property, that you are unemployed or have been bankrupt, or you have rent arrears.

The authority has acted irrationally and perversely where it has refused an application for a discretionary amount and has made a decision that no authority, properly directing itself, would have reached. An example where an authority might act unreasonably in refusing a discretionary reduction is where the authority has created a liability by its own failure to award you a reduction at the correct stage, due to its own errors. The absence of a policy altogether increases the likelihood of a successful appeal.

The tribunal may remit the matter to the billing authority to be reconsidered.

The tribunal cannot hear an appeal if it amounts to a challenge to the legality of the local authority's discretionary reduction scheme. This can only be done by an application for judicial review in the High Court. The right of appeal does not extend to decisions by a billing authority on a person's application for funding or financial support unrelated to the discretionary scheme.<sup>41</sup>

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## 3. How to appeal

### England and Wales

Your appeal must be in writing. You, or someone on your behalf, must write directly to the clerk of the relevant tribunal. In England, you can register an appeal online at the Valuation Tribunal Service website. However you appeal, you should state a number of prescribed matters, including:<sup>42</sup>

- the reasons for the appeal; *and*
- the date on which the first letter about the matter was served on the local authority; *and*
- the date, if any, when you were notified by the local authority of its decision.

If your appeal arises under section 16 of the Local Government Finance Act 1992 regarding liability, exemption or discount or from a decision about your entitlement to council tax reduction (CTR), it must include the following:

- your full name and address; *and*
- the address of the property (if different to your home address); *and*
- the name of your local authority and the date you first wrote to it; *and*
- the date on which the authority refused your appeal (if it replied); *and*
- brief reasons why you consider the decision or calculation to be wrong; *and*



- details of any other appeal relating to council tax benefit (pre-1 April 2013) or housing benefit, which arises from the same facts and which you made to the First-tier Tribunal for social security matters.<sup>43</sup>

If you fail to supply the information, you will be asked to provide it. If you do not supply the information within the time specified, your appeal will not be admitted.

If it is discovered at the hearing that you have omitted information which should have been supplied, the tribunal can apply a 'common sense test' so the appeal is not struck out. The appeal should not be struck out if the error or omission is merely technical or the result of a clerical error and no difficulty or prejudice has been caused to the billing authority. If the appeal is struck out, you may start a new appeal.

### Directions to parties

Instructions of how to proceed with your appeal, known as 'standard directions', are sent to both sides when the notice of an appeal hearing is issued. If you do not follow the steps laid down in the direction, your submission may be excluded.<sup>44</sup> The valuation officer and the local authority are also expected to follow directions. It is important to read the directions and comply with them as fully as possible, including any time limits.

A failure by the billing authority to comply with the standard directions in the specified time will result in its evidence being excluded and in its being barred from any further participation in the proceedings, with a notice being issued to the authority.<sup>45</sup>

Where the billing authority has been barred for failure to provide the material specified in the standard directions, the appeal is automatically allowed by default, without any consideration of the merits of the appeal. However, the tribunal's order will be delayed for 28 days in such a case. This is to allow the billing authority an opportunity to apply to the tribunal (which it must do within 14 days) for the appeal to be relisted for hearing on the grounds that it did not receive the notice of hearing, or alternatively, that it did comply with the standard directions or for some other exceptional and compelling reason that provides an excuse for failure to comply.

### Scotland

An appeal to a valuation appeal committee must be made in writing to the local authority within four months of the date on which the grievance was first raised with it in writing.<sup>46</sup> There is no power to consider out-of-time appeals. The letter should state:<sup>47</sup>

- the reasons for the appeal; *and*
- the date on which the first letter disputing the matter(s) was served on the local authority.

The local authority must pass the appeal to the secretary of the relevant valuation appeal committee.<sup>48</sup>

The dates and venues of Valuation Appeal Committee hearings are arranged by individual panels and publicised by their secretaries. Details of hearing dates are posted online.

## 4. How appeals are dealt with

While there are many similarities in the way in which Scottish valuation appeal committees and the English and Welsh valuation tribunals deal with appeals, different rules apply in Scotland from those which apply in England and Wales.<sup>49</sup>

An appeal is normally dealt with by an oral hearing (see p273) but, if all the parties agree, it can be dealt with by written representation (see p269).<sup>50</sup> In most cases, it is advisable to request an oral hearing. **Note:** during the coronavirus pandemic, oral hearings are usually by video link.

There is likely to be a wait of some months between the acknowledgment of your appeal and the actual hearing. Use this time to prepare for the hearing. The Valuation Tribunal Service's customer charter aims to list council tax liability and banding appeals within four months of registration.

In an appeal under section 16 of the Local Government Finance Act 1992 on liability, exemptions, discount or any calculation, the tribunal normally contacts you about two weeks before the hearing, and you must make sure you send copies of any documents you intend to use at the hearing well in advance to the tribunal and other parties to the appeal.

### *Appeal management powers – Valuation Tribunal for England*<sup>51</sup>

The Valuation Tribunal for England (VTE) has the power to regulate its own procedures, including extending, amending, suspending or setting aside an earlier direction and case management powers to:

- extend or shorten the time for complying with any regulation or directions;
- consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat an appeal as a lead appeal;
- permit or require a party to amend a document;
- permit or require a party or another person to provide documents, evidence, information, or submissions to the VTE or a party;
- deal with an issue in proceedings as a preliminary issue;
- hold a hearing to consider any matter, including a case management issue;
- decide the form of any hearing;
- adjourn or postpone a hearing;
- require a party to produce a bundle of documents for a hearing;
- stay proceedings; or

- suspend the effect of its own decision pending the determination by the Upper Tribunal or a court of an application for permission to appeal against, and any appeal against or review of, that decision.

## **Pre-appeal agreement**

In England, the parties may reach an agreement before the appeal hearing (see p273) or before written representations are considered (see below). The agreement includes how the valuation list is to be altered and the listing officer must serve a copy of this on the VTE and on all the parties to the agreement. The appeal is treated as withdrawn and there is no need for you to do anything further. The alteration to the list must take place within six weeks.<sup>52</sup>

Practice Statement 16 makes provision for formal consent orders where parties may jointly apply for proceedings to end. The application must be in writing and must include:

- the appeal number; *and*
- the existing entry in the list (rateable value, description and address); *and*
- full details of the names of the parties; *and*
- the date(s) and amounts of any reduction together with the entry (if different) that the list is to revert to if a temporary reduction is sought.

The applications for consent orders are considered by a senior member of the tribunal and no reasons need be given.<sup>53</sup> The consent order will dispose of the proceedings.

In Wales, an appeal can be settled and disposed of on the basis of written representations if all the parties have given their consent in writing.<sup>54</sup>

## **Written representations**

Written representations are a relatively quick and effective procedure for resolving straightforward appeals. For an appeal to be dealt with in this way, all the parties (normally you, the listing officer/assessor and the local authority) must give their written agreement.<sup>55</sup>

There is no maximum time limit in which the tribunal or committee must determine the appeal on the basis of written representations. Once it is agreed that the appeal is to be dealt with in this way, the clerk must serve notice on the parties, and they have four weeks in which to send their written representations. Copies are sent to the other parties. There is then a further four-week period in which comments may be made. At the end of this last period, the clerk or secretary sends the available material to the tribunal or committee within four weeks. The tribunal or committee may:<sup>56</sup>

- require any party to provide additional material; *or*
- order that the appeal be dealt with by a hearing; *or*
- proceed to reach a decision.

If additional information is required, copies of that material must be provided to all the other parties. Each party may, within four weeks of receiving the additional material, supply a further statement in response.<sup>57</sup> Written representations continue as an alternative to remote hearings during the coronavirus pandemic.

In Scotland, permission to deal with the appeal by written representation can be withdrawn by any of the parties at any time before a decision is reached. This might happen, for example, if the other party's arguments are not as expected. If permission has been withdrawn, the appeal must be dealt with by an oral hearing.<sup>58</sup>

## Pre-hearing review

In England and Wales, a tribunal chair may order a pre-hearing review to clarify the issues to be dealt with at the hearing, such as the procedure to be followed, evidence and time limits.<sup>59</sup> This may be done either at the request of you, any other party, or on the chair's own initiative. At least four weeks' notice must be given of a pre-hearing.

## Extension of time limits

If you cannot meet a time limit in any of the steps of an appeal, ask for it to be extended. Time limits can be extended in appeals about liability, completion notices, penalties and valuation bands.<sup>60</sup>

A request for an extension of time should be made to the tribunal president using the prescribed form.

An appeal can be pursued out of time if the president is satisfied that you were unable to appeal by the normal deadline because of circumstances beyond your control. You must therefore provide a reason for why you need an extension. More information may be requested from you and other parties to the appeal in order for a decision to be made. In some cases, a hearing may be held.

The president considers the following when deciding whether an extension should be granted:<sup>61</sup>

- when the notice was actually received;
- whether you were informed of the right of appeal and the 28-day limit;
- whether you have acted with all reasonable speed in the circumstances;
- your reasons (and any proof) for the delay, such as illness, absence from home or bereavement;
- whether it would be contrary to the interests of justice not to permit the appeal to be heard, or heard fairly.

When considering non-compliance, the tribunal must decide whether the breach was serious, if there had been good reason for the breach and if the breach caused any disadvantage and also consider the interest of justice. Tests used in the Upper Tribunal and the higher courts may be adopted.<sup>62</sup>



A decision is sent to you, with copies sent to all other parties (or potential parties). There is normally no further right of appeal against the decision to reject an application to extend time limits. A further application may be made only on the basis of completely new information that was not available or known at the time of the earlier application.<sup>63</sup>

An expectation that an appeal could be settled by agreement with the valuation officer or the council is not likely to be a good reason for a delay in compliance with the tribunal's directions.<sup>64</sup>

If you are dealing with administration staff at an early stage of a liability appeal where no reply has been received from the billing authority, it may be advisable to refer to section 16 of the Local Government Finance Act 1992 if staff are reluctant to register the appeal. You are not required to produce a reply from the local authority where none has been issued and more than eight weeks have elapsed since first writing to the authority.

## Lead cases

If appeals are made to the tribunal by more than one person about the same issues of fact or law (eg, a number of appeals about valuations in the same block of new flats), the tribunal can specify one or more of the appeals as a 'lead case' and postpone making a decision on all other related appeals. The result of the lead appeal can apply to (and be binding on) the postponed appeals.<sup>65</sup> You must be sent a copy of the decision. If your appeal is not the lead case, you can apply in writing to the tribunal within one month for a direction that the decision does not apply to, and is not binding on, your appeal.<sup>66</sup>

It is important with a lead case, or with a collection of appeals relating to the same building, that a tribunal addresses any specific factor which may relate to a particular property compared with others included in the same appeal. The circumstances of each property must be considered.<sup>67</sup>

## Withdrawing an appeal

In England and Wales, you may withdraw an appeal on a valuation matter by either sending or delivering a notice to the VTE/VTW.<sup>68</sup> The tribunal must notify each party in writing that an appeal has been withdrawn.

In England, you can orally give notice to withdraw the appeal at the hearing. The tribunal must give its formal consent. In Wales, your appeal may be withdrawn at the hearing itself by the appeal panel after considering written representations.<sup>69</sup>

In Scotland, an appeal may be withdrawn by writing to the secretary of the valuation appeal committee, or at the hearing by asking the permission of the committee. If the assessor decides, after the appeal has been initiated, to agree to the original proposal or the local authority decides not to contest the appeal, it is considered to be withdrawn.<sup>70</sup>

#### Reinstatement of an appeal

In England, it is possible to apply to reinstate an appeal after you have given notice to withdraw it. This might be appropriate, for instance, if an appeal has been withdrawn by mistake, if new advice or evidence has been obtained or if a ruling of another tribunal or the High Court might affect the position.

An application must be made in writing to the VTE and within one month of either the date:<sup>71</sup>

- on which the VTE received the withdrawal notice; *or*
- of the hearing at which the appeal was withdrawn.

You should provide any supporting documentation and give your reasons.

#### Paying council tax while an appeal is pending

If you have been served a bill, you must make the payments required by either the bill or by any subsequent agreement reached with the local authority. The fact that an appeal has been made does not affect this obligation, though some local authorities are willing to suspend recovery action until an appeal has been dealt with. If an appeal is upheld, any overpayment of tax should be refunded or credited against future liability.

In England and Wales, if the local authority seeks a liability order, the magistrates' court may also agree to an adjournment if an appeal about liability has started. An adjournment should always be granted if there is the prospect of a successful appeal in a case in which a local authority is seeking a committal order against a debtor (see p240). This approach has been approved by the High Court.<sup>72</sup>

If the authority has obtained a liability order through the magistrates' court or a summary warrant or decree in Scotland, it should suspend recovery action until the appeal has been determined. In such a case, the local authority should suspend recovery action until the appeal has been determined. A failure to do so could be escalated to the Ombudsman (see p294).

A further exception is if an appeal has been made against a penalty imposed by the local authority (see p263). In such cases, the penalty does not have to be paid until the appeal has been decided. If a sum in council tax relates to a previous year, it could also be argued that the matter should wait for a determination by the VTE/VTW or a valuation appeal committee in Scotland.

If, following the initiation of an appeal against the imposition of a council tax penalty, the local authority decides to remit the penalty, it notifies the VTE/VTW or valuation appeal committee and the appeal is treated as withdrawn on the date on which the notice is served.<sup>73</sup>

#### Appealing as an interested person

An interested party is anyone who is affected by the appeal. It includes:<sup>74</sup>

- the property's owner;

- a person who may be jointly or severally liable to pay council tax;
- a person other than an owner who would be liable to pay council tax if the dwelling were not an exempt dwelling or where the amount so set were other than nil;
- any other person who is a taxpayer in respect of the dwelling.

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## 5. Appeal hearings

The president of the Valuation Tribunal for England (VTE) has issued a consolidated practice statement for the conduct of proceedings. The Valuation Tribunal for Wales' (VTW) best practice protocols cover the same areas. These help interpret the procedural regulations and the steps which must be taken when appealing, and give an idea of the approach of the tribunal in specific situations. The practice statements apply whenever problems arise and are worth consulting when making an appeal.

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### *Practice statements in England and Wales*

The VTE's consolidated practice statement is available at [valuationtribunal.gov.uk/existing-appeal/preparing-for-the-hearing/vte-guidance/consolidated-practice-statement](https://valuationtribunal.gov.uk/existing-appeal/preparing-for-the-hearing/vte-guidance/consolidated-practice-statement). In July 2020, *COVID-19 Virus Emergency Variation of Practice Statement* was issued to update procedures during the coronavirus pandemic.<sup>75</sup>

The VTW's best practice protocols are available at [valuationtribunal.wales/best-practice-protocols](https://valuationtribunal.wales/best-practice-protocols). A new protocol on video hearings was issued to help with remote hearings during the coronavirus pandemic.<sup>76</sup>

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You should read the information in the practice statement/best practice protocol which provides key details of how appeals should be prepared, particularly if you are a professional representative or acting in an official capacity. However, taxpayers acting by themselves are not necessarily expected to follow all the preferred steps in the practice directions, but are required to provide material to the best of their ability so that the other parties and the tribunal are able to deal properly and fairly with the case. A higher standard may be expected of professional representatives and local authorities. Most valuation tribunal hearings are open to the public and, if possible, it is a good idea to watch the tribunal in action to learn how proceedings operate. This may raise problems with remote hearings in respect of external observers recording proceedings without permission and circulating or altering images.

## Postponements

In some cases it may be necessary to postpone a hearing.

Postponements are handled initially by staff of the valuation tribunal before any hearing has commenced, and, although 'administrative', must be handled in accordance with judicial practice and procedural principles.<sup>77</sup>

Either party may apply for a postponement in advance of the hearing date. You must supply reasons and these must be given and the other party or parties notified, with the application made in writing as soon as possible. The application should indicate the reasons behind it and whether the other parties agree. In cases of urgency, the application for a postponement may be made over the telephone.

The presumption is against the granting of postponements. The valuation tribunal states that postponements will not therefore be granted automatically but only if there are (exceptional) good and sufficient reasons for doing so, and it is in the interests of justice to do so.

What are considered 'good reasons' for granting a postponement may include:<sup>78</sup>

- the ill health of a party or representative. If a representative has a long-term illness, it is expected that alternative arrangements for representation will be made. If possible, an application for reasons of ill-health should be supported with medical evidence;<sup>79</sup>
- an unexpected or unforeseen event which makes it impossible to attend the arranged day of the hearing – eg, significant IT problems;
- new evidence or caselaw that requires consideration;
- material or notices sent to an incorrect email address resulting in delay in reaching the correct recipient.

The following examples do not constitute good reasons:

- holiday commitments;
- the fact that the parties have failed to enter into meaningful negotiations or negotiations are underway but incomplete and are expected to continue beyond the hearing date.

Where you have a good reason, postponement should normally be granted unless either the other party presents a stronger argument to the contrary or the interests of justice require the application to be rejected.<sup>80</sup> Similar principles to those applied with granting adjournments may be expected to apply in law (see p216).

All parties are advised in writing (normally within three working days) of the decision, together with the reasons, provided that there is sufficient time prior to the hearing.<sup>81</sup>



## Notice of the hearing

In England, the VTE must give each party 'reasonable notice' of the date and time of the hearing.<sup>82</sup> This normally means 14 days, unless parties consent or there are urgent or exceptional circumstances.

In Wales, the clerk to the tribunal must give at least four weeks' written notice of the date, time and place of the hearing.<sup>83</sup> In Scotland, the secretary to the valuation appeal committee must give at least 35 days' written notice.<sup>84</sup>

There is no maximum time limit in which the tribunal or committee must hear the appeal.

In Wales, the clerk must advertise the date, time and place of the hearing:<sup>85</sup>

- at the tribunal's office; *and*
- outside an office earmarked by the local authority for this purpose; *or*
- in another place within the local authority's area.

In Scotland, the secretary must advertise the details at a local authority office and the place at which the hearing will be, if different.<sup>86</sup>

In all cases, the advert must name a place where a list of the appeals to be heard may be inspected by members of the public.<sup>87</sup>

## Representatives

On the day of the hearing, any party may:<sup>88</sup>

- represent her/himself; *or*
- be represented by a lawyer; *or*
- be represented by anyone else.

In England and Wales, where you are representing yourself, you may have the assistance of someone else – eg, a friend, a relative or an adviser.<sup>89</sup> In Scotland, you may be represented by another person, whether legally qualified or not. However, if there are good and sufficient reasons for doing so, the committee may refuse to permit a particular person to represent a party at a hearing.<sup>90</sup> There may be difficulties with representation where a remote hearing is being held.

## How the hearing is conducted

In England and Wales, the appeal is heard by two members, one of whom must be the chair and who must preside. The president, vice presidents and nominated senior members may sit alone as the tribunal. If all parties who attend the hearing agree, the appeal may be decided by two members in the absence of a chair.<sup>91</sup>

A council tax reduction (CTR) appeal must have a First-tier Tribunal judge as one of the panel if it involves a complex issue such as right to reside or an assessment of income or capital.<sup>92</sup>

### **Putting documentary evidence to the tribunal**

Written statements are encouraged from the party bringing the appeal, and you should produce relevant documents concerning your appeal. The Valuation Tribunal Service states in the booklet *Council Tax Valuation: your appeal and preparing for your valuation tribunal hearing*: 'You should make sure that your case explains the issues that you and the VOA disagree about and the decision you want from the tribunal. Set out your arguments that support your case (including any legislation or case law) and enclose any evidence that you have to support this.' This is good advice because, although the tribunal allows you to give oral evidence to establish the facts, it often wants whatever you say to be confirmed by documentary evidence.

### **Serving documents on the local authority or listing officer**

At least six weeks before the hearing, you should receive the other party's full case in response to the appeal, including arguments, evidence, legislation, caselaw and documents. Documents should be sent by 5pm on the day on which they are due.<sup>93</sup> If the time specified by the regulations or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.<sup>94</sup> 'Working day' means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday.<sup>95</sup>

In England, if you wish to provide evidence for the appeal, you should submit copies to the other party at least four weeks before the hearing. This may include caselaw or references to the legislation.

Anything sent to after the four-week deadline may not be considered by the tribunal unless you can demonstrate reasons why the evidence was not available at the time.

In Wales, there is no statutory requirement for parties to exchange evidence in advance of a hearing other than under the Valuation Tribunal for Wales Regulations 2010.<sup>96</sup> However, the tribunal expects parties to have discussed and exchanged evidence at least two weeks before the hearing day. Evidence must not be used unless the evidence has been supplied to you and all other parties to the appeal or where any party, on 24 hours' notice, has not been allowed to inspect information or make copies or extracts from any documentation.<sup>97</sup>

Unless your case is postponed or settled by agreement, consent order or withdrawal, it is expected that you (or your representative) will attend the hearing to present the appeal. You may request that the hearing proceed without you being there by contacting the tribunal at least 24 hours before the hearing day.

Evidence that has been served earlier in the appeal need not be submitted again, but it should be made clear which evidence or argument will be relied upon.<sup>98</sup>

At least two weeks before the hearing, a billing authority may be required to electronically submit to the tribunal and by either email or post to the appellant, a bundle of documents including any documents provided under any directions.

A failure to do so may lead to evidence being excluded or a party being barred from taking further part in proceedings.

The VTE advises that you should aim to bring five copies of any written documents that you want to present in evidence (a copy for each of the two or three members, and one each for the clerk and the other party as well as your own).

It is very important that the local authority or listing officer be sent the copies of any evidence in advance, even if these are not read. At the very least, the opportunity to read the evidence in advance should be given.

In an appeal about CTR, send the local authority copies of any documents you want the tribunal to consider at least 14 days in advance of the hearing.

In an appeal about liability, a discount, an exemption or any calculation, you should also send copies of the written evidence and documents in advance to the local authority. Ideally, this should be at least one month before the hearing, subject to any directions before the hearing, otherwise there may have to be a postponement of the case. However, in the case of documents that may become available at a late stage, the tribunal has the discretion to admit or exclude such evidence.<sup>99</sup> In Wales, the VTW expects parties to have discussed and exchanged evidence at least two weeks before the hearing day.<sup>100</sup>

If you fail to follow a VTE rule or miss a deadline, the appeal can continue if the tribunal considers it just to do so.<sup>101</sup>

The tribunal may give directions to produce what is known as a 'bundle'<sup>102</sup> and this is often the best way to present your evidence, whether the tribunal gives a direction or not.

### **Bundle**

A 'bundle' is a collection of all the documents attached together, with each page given a number. The purpose of the bundle is to help the tribunal pinpoint the key evidence, and speeds up the tribunal process where all parties have copies of the documents in the same order. The simplest way to produce a bundle is to put the documents together in date order, although there is no specific rule that documents have to be in this order. You can also add your own statement or witness statement to the documents, which you can place at the beginning of the bundle. You should add a front page to the bundle. This should be marked 'In the Valuation Tribunal for England' (or Welsh or Scottish equivalent) and give the appeal number, the address of the property and your name as the appellant and that of the local authority or listing officer as the respondent.

Other evidence that may be difficult to copy, such as photographs and large plans, can be shared on the day, but you should let the other parties know in advance.

You can send copies of information by electronic means, as well as providing physical copies.

## **Remote hearings**

During the coronavirus pandemic, face-to-face hearings are suspended. Instead, if the tribunal cannot decide an appeal on the papers, it may hold a 'remote hearing' – ie, by video conference (eg, by Zoom or Microsoft Teams) or telephone, or a combination of both. A flexible approach must be followed at all times. The VTE and VTW issued updated practice statements on the procedures for this.<sup>103</sup>

The question of whether a fair resolution is possible by way of a remote hearing will differ in each case. Many factors will come into play and the issue of whether and to what extent live evidence and cross-examination will be necessary is likely to be important in many cases.<sup>104</sup>

Concerns have arisen over whether these provide an adequate substitute given that not all taxpayers are able to use technology and in respect of balancing confidentiality and risks relating to data manipulation and security. Particular care needs to be taken with personal data and issues relating to social security.

In Wales, remote hearings are referred to as 'video hearings'. A protocol for video hearings is available at [valuationtribunal.wales/best-practice-protocols](https://www.valuationtribunal.wales/best-practice-protocols).

If you do not want a video hearing, you can:<sup>105</sup>

- request for your appeal to be determined 'on the papers', so long as all parties to the appeal agree;
- ask that your appeal is heard in your absence via written submission;
- seek a postponement to such a time as it is possible to attend a hearing in person.

## **Public hearing**

The hearing normally takes place in public (this gives you an opportunity to attend another hearing as an observer to see how a tribunal works). However, in England and Wales, a tribunal can decide to hold the hearing in private if any of the parties request it and the tribunal considers that the interests of that party would be prejudiced if the hearing were held in public.<sup>106</sup> In this case, the panel decides who should be present. Someone who might disrupt a hearing or who is likely to prevent another person giving evidence may be excluded.

In Scotland, the committee may, if it has reasonable cause, hold the hearing in private.<sup>107</sup>

## **Extraordinary hearing venues**

In exceptional cases, it is possible to hold a tribunal at a place other than that normally used for hearings.<sup>108</sup> This could include your home (eg, due to serious illness) or in a place where you are staying if you are unable to attend any other venue. Such venues are known as 'extraordinary venues'. In such a case, the requirement that a hearing be open to the public may be waived. Applications for extraordinary venues should be made in writing to the tribunal or committee.



## **Failure to appear and striking out of appeals**

In England and Wales, if you (or in Scotland, you or your representative) fail to appear at the hearing, the appeal may be dismissed or struck out, including where a party fails to follow a direction from the tribunal.<sup>109</sup> In England and Wales, an appeal on a valuation matter may also be struck out if any party other than the listing officer fails to attend. The VTW may also strike out an appeal or part of an appeal related to CTR where the reduction awarded is the maximum that the authority can award under its scheme. If the appeal relates to more than one issue, only that part which relates to the reduction can be struck out, although the tribunal must give you an opportunity to be heard.

In England and Wales, if you can show reasonable cause for not appearing, you may request the tribunal to review its decision (see p285). The request must be made within four weeks of the notice of the decision being given.<sup>110</sup>

In Scotland, if you have a reasonable excuse for your absence, the valuation appeal committee may set a new date, time and place for the hearing.<sup>111</sup> It must give all parties at least seven days' notice. For a hearing to be recalled in this manner, you must write to the committee (normally within 14 days of being notified that the original appeal was dismissed), requesting a new hearing date and setting out the reason for the original absence. If the committee considers that there are special circumstances, it may allow an out-of-time request.

If any party does not appear at the hearing, the tribunal or committee may hear and determine the appeal in her/his absence.<sup>112</sup> Local authorities do not always appear in person. Whether the local authority sends a representative or not, always send it a copy of the documents you plan to use in an appeal well before the hearing.

## **Order of the hearing**

The tribunal or committee may determine the order of the hearing – ie, which party puts its case first. The 'model procedure' practice statement in England provides that usually you are to open your case first.<sup>113</sup> However, sometimes the billing authority is invited to present its case first. If you are unrepresented, the panel is entitled to invite the local authority or listing officer to go first, where it is thought that to do so will result in a fairer hearing.

The panel must ensure that the local authority or listing officer is given the opportunity to respond to your case. In all cases, you must be given the final opportunity to address the panel.<sup>114</sup>

You are given an opportunity to put questions to the local authority. Parties at the hearing may examine and cross-examine any witness and call witnesses. Evidence can be given in written submissions, including in witness statements.<sup>115</sup> Witness statements are often the best way to provide evidence at hearings, with the person reading from her/his statement and answering any questions which the other side may have about the information it contains. Where you are unrepresented and are having difficulty in formulating questions, the clerk (or

the chair) may assist you, but not to the point where s/he becomes your advocate.<sup>116</sup>

At the end of the appeal, each side is entitled to make a closing submission. It is best to make closing submissions fairly short, as all the evidence should have been put forward to the panel by this stage. The aim of the summing up is to succinctly review the case and explain why your case should be preferred, not to repeat the evidence that the tribunal has already heard. You should not seek to introduce any new material to the panel in a closing speech.

At the end of the hearing, the tribunal or committee will normally retire to consider its verdict or the parties to the appeal will be asked to leave the room. The clerk can advise the tribunal or committee, but no other person should be present while it is engaged in deliberations. If any other person is present, the decision may be challengeable on grounds of breach of natural justice.

## **Adjournment and dismissal**

A hearing may be adjourned for such time, to such a place and on such terms (if any) as the tribunal or committee thinks fit. Reasonable notice of the time and place to which the hearing has been adjourned must be given to every party.<sup>117</sup>

In England, an application for an adjournment must be made in writing to the clerk. The clerk considers the request and takes into account relevant factors including:

- the reasons;
- the other parties' comments on the request;
- the length of notice that was given for the hearing;
- the preparation for the hearing that the parties have undertaken;
- the time remaining before the hearing;
- whether the appeal has previously been listed for hearing.

If the clerk refuses the adjournment, an application can be made to a member or to the VTE itself on the day. Adjournments will only be rarely granted at the hearing, however, as parties are expected to be prepared.

In Scotland, a valuation appeal committee may request representations from both parties and then adjourn as it sees fit.

In some cases, an appeal may be dismissed if the listing officer or assessor fails to show that you have been properly served with notices and documents.

## **Witnesses**

The VTE may summons a person to attend as a witness and order her/him to produce any documents or answer any questions relating to the proceedings.<sup>118</sup> A summons must normally be given with 14 days' notice (or a shorter period if the tribunal directs). A summons or order must state that a person may apply to vary or 'set aside' the summons or order if s/he has not had the opportunity to object

to it, and must state the consequences of non-compliance. There is currently no equivalent rule in Wales or Scotland.

## **Evidence**

### **England and Wales**

Tribunals are not bound by any rules on the admissibility of evidence before courts of law; rather, they are concerned with the weight of any evidence.<sup>119</sup> For example, what someone else has been heard to say (hearsay) would be admissible at a hearing, but given less weight than the direct evidence of a witness.

Evidence can be given orally or in written form, such as valuation reports. Make sure that you have multiple copies of any documents wherever possible. If the valuation of a dwelling is in question, evidence could include photographs or a video. Occasionally, physical evidence may even be produced.<sup>120</sup>

You should expect to be asked questions by members of the tribunal and by the listing officer or local authority representative. For example, if you allege that your property value is affected by blighting or a nuisance of some kind, you may be asked what steps you have taken to remedy the problem. If you have taken no such steps, the conclusion might be drawn that the problem is not sufficiently serious as to make an impact on the property's value.

In appeals that do not relate to valuation matters, the local authority must give the other parties two weeks' notice if it wishes to produce evidence of information supplied in connection with a disability reduction or information in relation to liability. This information may be inspected and copies taken if at least 24 hours' notice is given to the local authority.<sup>121</sup> In a valuation appeal, the listing officer must give at least two weeks' notice of information s/he proposes to use at the hearing. Again, you and any other party to the appeal may, having given 24 hours' notice, inspect the documents and make a copy of all the documents, or an extract, if you wish.<sup>122</sup>

You have the right to inspect the relevant documents and to request information relating to a maximum of four comparable dwellings or, if the listing officer specifies more, the same number as is specified by the officer. The listing officer has a duty to produce both sets of documents at the hearing.<sup>123</sup>

### **Historic values**

The government has indicated that the Valuation Office Agency will have greater freedom in the future to release pre-2000 property sales information to taxpayers. This information could be useful where you may be able to show a trend in rising house prices for properties with a particular banding and argue that your property is similar. Currently, such information is only shared once an appeal proceeds to a tribunal.

### Scotland

In Scotland, a committee may require a party to provide the other parties, by a set date, with:<sup>124</sup>

- a written statement outlining the evidence to be given at the hearing; *and*
- copies of all documents which are to be produced for the hearing.

If a committee has made such a requirement, no other material may be produced unless the committee allows it.<sup>125</sup>

If there is to be a hearing, the committee has the power to grant to any of the parties the same rights of access to documents as could be granted, or provided, by the Court of Session.<sup>126</sup> The committee may require:<sup>127</sup>

- someone's attendance at the hearing as a witness; *or*
- the production of any document relating to the appeal.

If someone fails to comply with such a written requirement, s/he is liable on summary conviction to a fine not exceeding level 1 on the standard scale.<sup>128</sup> No one need produce any material or answer any questions which s/he would not need to answer in a court of law (eg, professional confidences)<sup>129</sup> or questions that might incriminate a person to a criminal charge. Additionally, if someone is required to appear as a witness at the hearing and it takes place more than 10 miles from her/his home, s/he does not have to appear unless her/his necessary expenses are paid.<sup>130</sup>

### Site inspections

In England and Wales, a tribunal may conduct a site inspection of the appeal premises as part of the evidence. In council tax cases, the tribunal is only able to enter the appeal property. The tribunal members who hear your case will be the same ones to attend the site inspection. It is important to remember that the site inspection is an extension of the hearing and a formal step. No new evidence may be introduced at this stage unless requested by the tribunal. The clerk will liaise with the parties about arrangements.

### Caselaw

As well as evidence, it is possible to raise points of law at a tribunal, including law found in cases decided by the courts. If you are raising a point of law before the tribunal, you are expected to produce a copy of the judgment and provide a copy for the clerk and any other party to the hearing.

Case references should normally be provided in advance of the hearing to the other parties and to the tribunal, so that these cases may be studied prior to the hearing. Any cases not available online should be provided in a hard copy. It is best to bring multiple copies to the hearing, as the tribunal may not have facilities to make photocopies. It is not expected that multiple copies of well-known



caselaw should be brought in a non-contentious case but, if you intend citing the case, you should have at least one full copy with you.

### Failure to agree

Where an appeal has been heard by a panel with an even number of members who, at its conclusion, are unable to agree, a completely new panel will be selected to hear the appeal afresh.<sup>131</sup>

### Decisions and orders

Following a hearing, the VTE/VTW or a valuation appeal committee has the discretion to give an oral decision to the parties concerned.<sup>132</sup> Whether or not an oral decision is given, a written decision, together with a statement of reasons, must be supplied to the parties.

In England and Wales, this should be done as soon as is reasonably practicable after the decision has been made. If the tribunal does not give written reasons, you may request reasons in writing. Your request must be made within two weeks of the date on which the tribunal sent or provided you with a final decision notice.<sup>133</sup> Sometimes a handwritten copy is given to the parties on the day, with a more formal typed copy supplied afterwards. In Scotland, it must be done within seven days of the decision.<sup>134</sup>

Reasons must be adequately expressed though not necessarily to the standard expected in court.<sup>135</sup>

Tribunals are expected to give reasons for their decisions. If a tribunal or committee fails to give adequate reasons, the decision is invalid. In Scotland, the valuation appeal committee is expected to give reasons for its decision, by providing clear and sufficient grounds to indicate why it reached the decision it did.<sup>136</sup>

The decision may include an order which the tribunal considers just arising from its decision. You need to think about what order you want the tribunal to make. It is a good idea to draft this and supply it to the tribunal.

If you are seeking a refund on overpaid council tax, the ruling of the valuation tribunal has become a procedural requirement following *Lone v London Borough of Hounslow*.<sup>137</sup>

After the tribunal or committee has made a decision, it has the power to make additional orders to give effect to it, such as ordering the billing authority to reverse its decision.<sup>138</sup> These are sometimes called 'ancillary orders'. An order may include a direction for the local authority to repay you any council tax owing or any bailiffs' fees or other charges, with interest from the date(s) of payment.

An order may relate to specific time periods of liability or (in the case of an appeal against a decision by the listing officer) may require any alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances.<sup>139</sup>

In Scotland, the valuation appeal committee may require:<sup>140</sup>

- the reversal of a decision of a billing authority;
- the quashing of any sum in council tax (or council water charge);
- the recalculation of any amount;
- the quashing of a penalty;
- the alteration of a list (in the future or retrospectively).

Any alteration of a list must be carried out within six weeks beginning on the day on which the order is made.<sup>141</sup>

In Scotland, an additional order can be obtained that 'may require any matter ancillary to its subject-matter to be attended to'.<sup>142</sup> A further order is at the discretion of the committee and must be exercised reasonably.

The valuation appeal committee has no power to direct that the assessor revalue properties that are subject to an appeal where the decision is quashed. This remains a statutory function that can only be exercised by the Assessor.<sup>143</sup>

Decisions become public documents. In addition to being sent to the parties, they are published online. Where you are appealing about council tax liability decisions, your name and other identifying information is removed from the online version in the interests of privacy.<sup>144</sup> You can request material to be omitted ('redacted' from the published decision, or ask that names and other identifying information be omitted.<sup>145</sup> It is up to you to satisfy the tribunal that information should not be published.

#### *Previous tribunal or committee decisions*

You may be told at some stage of the appeal process that a valuation tribunal or committee has already decided a particular matter and that your attempt to appeal on the same grounds will fail. You should not accept this as a reason for abandoning an appeal. Although local authorities and listing officers have tended to treat previous decisions involving points of law as binding, it should not be assumed that a tribunal or committee will automatically find against you. Just because one appeal has been decided in a particular way does not necessarily mean that the same approach will be taken with a different appeal. Tribunals are not precedent-making bodies that are expected to follow decisions of earlier tribunals. Your case should be looked at on its merits.<sup>146</sup>

### Records of decisions

In England and Wales, the clerk has a duty to make arrangements for the tribunal's decisions to be recorded. The record may be kept in any form, whether documentary or otherwise. The record should contain the following information in appeals about proposals:<sup>147</sup>

- your name and address;
- the matter appealed against;
- the date of the hearing or determination;

- the names of the parties who appeared (if any);
- the decision of the tribunal and its date;
- the reasons for the decision;
- any order made in consequence of the decision;
- the date of any such order;
- any certificate setting aside the decision;
- any revocation.

For other appeals, the record must also contain:<sup>148</sup>

- the date of the appeal; *and*
- the name of the billing authority whose decision was appealed against.

A copy of the relevant entry in the record must, as soon as is reasonably practicable, be sent to each party to the appeal. Each record must be retained for six years.<sup>149</sup> Records of VTE and VTW decisions are published at [info.valuation-tribunals.gov.uk](http://info.valuation-tribunals.gov.uk).

Anyone may inspect the records free of charge. If a person with custody of records intentionally obstructs someone from inspecting the records, without a reasonable excuse, s/he is liable on summary conviction to a fine not exceeding level 1 on the standard scale.<sup>150</sup>

The member who presided at the hearing or determination of an appeal may authorise that any clerical errors be corrected in the record. A copy of the corrected entry must be sent to the people to whom a copy of the original entry was sent.<sup>151</sup>

The production of a document certified by the clerk or the president is evidence of the decision and the facts it records in any proceedings in any court of law.<sup>152</sup>

In Scotland, each party has the right to make a recording of the hearing at her/his own expense. The committee should be informed of the intention to make a recording before the hearing begins.<sup>153</sup> In Scotland, decisions are published at [scotvac.org](http://scotvac.org).

## 6. Reviews of tribunal and committee decisions

There are limited circumstances in which a decision of the Valuation Tribunal for England (VTE), the Valuation Tribunal for Wales (VTW) or a valuation appeal committee decision in Scotland can be reviewed.

In England and Wales, except where a decision has been the subject of an appeal to the High Court, a tribunal may review its decision or set it aside.<sup>154</sup> This may only be done following a written application from any of the parties, provided it is in the interests of justice to do so, on one of the following grounds.

- A document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party (or a party's representative).
- A document was not sent to the VTE/VTW.
- A party did not appear and can show reasonable cause for this.
- The decision is affected by a decision of, or on appeal from, the High Court or the Upper Tribunal.
- There has been procedural irregularity.
- In relation to a decision on a completion notice, new evidence has become available (unless it could have been established by reasonably diligent inquiry or foreseen previously).

Any request for a review must be started promptly.

In England and Wales, you may request reasons for the decision which the tribunal has made. Normally, only a summary of reasons may be given, but you may request a full statement of reasons within two weeks of being sent the decision notice.

An application for a review (or 'set-aside') must normally be made within 28 days of the day on which written notice of the decision was sent. In exceptional cases where there is a good reason, an application may be made outside 28 days.

In England, there is an online form at [valuationtribunal.gov.uk/forms/review-application](http://valuationtribunal.gov.uk/forms/review-application).

The application must be considered by the tribunal president, who will decide whether one or more of the grounds are satisfied.<sup>155</sup>

There are three stages to the procedure:<sup>156</sup>

- the application for a review is considered;
- if granted, the review will take place and a decision reached on whether to set aside the decision;
- if the decision is set aside, the appeal will be considered afresh.

This is normally done without a hearing, but the president may call a hearing for the parties affected to make submissions.

All relevant parties are informed that a review is to take place and be invited to submit representations in writing within 14 days. A party may opt for a hearing to take place, which is then held within 28 days.

If a decision is to be set aside, the matter may be reheard or reconsidered by a differently constituted tribunal or, in England, treated as an appeal.<sup>157</sup> This can be done immediately if the parties consent.

As soon as is reasonably practicable after the outcome of the request for a review is known, the clerk must write to all parties informing of the outcome. Additionally, if an appeal to the High Court remains undetermined, the clerk must also notify the High Court as soon as reasonably practicable after the decision has been made.<sup>158</sup>



In Wales, reviews are undertaken by a tribunal. An application must be made in writing within four weeks. The tribunal members meet to consider the application and may decide:<sup>159</sup>

- not to undertake a review as the relevant criteria have not been met; *or*
- to undertake a review and not set aside the decision; *or*
- to undertake a review and set aside the decision.

Where a decision is to set aside the decision, any order made as a consequence of the original decision will be revoked and a re-hearing ordered. This may be by the same tribunal which made the earlier decision or a differently constituted one.

## Appeals to the High Court

If you are unsuccessful in the valuation tribunal, there is no further right of appeal except on a point of law – ie, where the law has been interpreted incorrectly. In England and Wales, this is made to the High Court; in Scotland, it is made to the Lands Valuation Appeal Court. You, the listing officer, assessor and local authority all have an equal right of appeal. In England and Wales, the High Court has made it clear that it will not normally interfere with findings of fact made by a tribunal, unless it can be shown that it has acted perversely – eg, the errors of fact are so severe that they amount to mistakes of law, and thus come within the jurisdiction of the High Court.<sup>160</sup>

The High Court considers that a matter will only become a point of law if the tribunal commits an error:<sup>161</sup>

- if it had applied the wrong legal test in considering the matter before it; *or*
- if it had reached a conclusion on the facts which was perverse, in the sense that no reasonable tribunal properly instructed as to the law could have reached that conclusion on the evidence; *or*
- if it had taken account of an irrelevant consideration or failed to take account of a relevant consideration in reaching the conclusions that it did.

It is not enough that you disagree with the tribunal's decision or that, having heard the evidence, the tribunal made a finding of fact which you dispute. It must be shown that the tribunal was irrational in that either there was no supporting evidence or that it left out relevant facts or considered irrelevant ones.<sup>162</sup>

In arguing that errors of fact have become an error of law, it is necessary to:<sup>163</sup>

- identify the finding which is challenged;
- show that it was significant in relation to the conclusion;
- identify the evidence (if any) relevant to the conclusion;
- show that the finding, on the basis of the evidence, was one the tribunal was not entitled to make.

Appeals may also be made if the tribunal fails to observe the rules of what is known as 'natural justice'. Examples of breaches of natural justice include the

involvement of a person in the hearing who is barred from appearing, bias, denial of cross-examination of witnesses or an opportunity to look at the evidence produced by the other side. A valuation tribunal which introduces legal points of its own volition does not breach natural justice.<sup>164</sup>

Concerns may arise as to natural justice at hearings conducted remotely and where all evidence and materials are online and not on paper forms. This is because technical issues may affect the operation of systems and because there may be problems ensuring that all panel members and parties to an appeal are able to see the same documents. Consequently, it may be sensible to provide paper copies of evidence and bundles to all parties and request that these are used at any virtual or remote hearing rather than rely on, for example, documents that are simply uploaded.

The appeal proceeds by way of review unless the court considers that it would be in the interests of justice to hold a rehearing.<sup>165</sup> The scope of the court's powers on a review in most cases renders it unnecessary to hold a rehearing.<sup>166</sup>

Seek legal advice before embarking on this course of action, as costs are likely to be in excess of £1,500 and could be much higher depending on the complexity of the case and whether the appeal is contested. The High Court has the discretion whether or not to award costs against an appellant, but the normal rule is that the loser pays the costs of the other side. The court's decision depends on the facts and the conduct of the parties, whether they choose to appear and whether the matter could have been settled otherwise.<sup>167</sup>

If the listing officer or the local authority brings the appeal, different rules apply. Costs cannot be awarded if the listing officer has brought the appeal, or if you neither contest the appeal nor attend the hearing. In cases where the local authority appeals to the High Court against a decision, the liability for costs will fall against the tribunal and not you. Some appeals about liability for council tax and chargeable dwellings must be made within two weeks of the date on which written reasons for the decision are given.

An appeal on a point of law to the High Court must be made within four weeks of:

- the date on which notice is given of the decision or order; *or*
- the date of a decision following review; *or*
- a determination by a tribunal that it will not review its decision where the application for review was made within four weeks of the original decision.

The High Court can hear appeals which are out of time (by judicial review) but this should not be relied on, as the right is purely discretionary.<sup>168</sup>

Details of how to appeal to the High Court are found in *The Supreme Court Practice*.

If the tribunal has acted in breach of natural justice, an application for judicial review may also be made (see p314). Strict compliance with the time limits is expected.<sup>169</sup> You are required to complete and submit a form for a statutory appeal

together with a skeleton argument. The High Court may place a stay on an application for a liability or any order until the appeal is determined.

The High Court may confirm, vary, set aside, revoke or remit the decision or order, and may make any order the tribunal could have made.

## Appeals to the Court of Session

In Scotland, an appeal from a committee decision must be made within 14 days. The appeal is started by writing to the secretary of the committee to state a case for the Lands Valuation Appeal Court or to the Court of Session. Six copies of an appeal case must be lodged in the court and six copies must be delivered to the solicitor for any other party to the appeal.

The Court of Session may intervene where a valuation appeal committee errs in the procedure it adopts and reaches conclusions that are illogical, erroneous in law and based on inadequate findings in fact.<sup>170</sup>

## Notes

### 1. Valuation tribunals and valuation appeal committees

- 1 Reg 90 CTR(S) Regs
- 2 **E** Regs 3 and 4 Valuation Tribunal for England (Membership and Transitional Provisions) Regulations 2009 No.2267  
**W** Regs 4-14 VTW Regs
- 3 Sch 11 para A18A LGFA 1988, inserted by Sch 4 para 2 LGFA 2012
- 4 VTE CPS 2020, Part 1, para 2 citing Supreme Court in *BPP Holdings v HMRC* [2017] UKSC 551

- 12 *Coll (LO) v Brannan CO/5268/2014; Coll (LO) v Kozak and Tsurumaki* [2015] EWHC 920 (Admin) CO/5270/2014

- 13 s16 LGFA 1992
- 14 **EW** s16 LGFA 1992  
**S** s81 LGFA 1992
- 15 **S** s81 LGFA 1992
- 16 **EW** s16 LGFA 1992  
**E** Reg 21 VTE(CTRA)(P) Regs  
**W** Reg 29 VTW Regs
- 17 **E** Reg 21(6) VTE(CTRA)(P) Regs  
**W** Reg 29(5) VTW Regs
- 18 s81 LGFA 1992
- 19 Reg 7 CTR(S)A(No.2) Regs
- 20 Reg 90A(4)(c) CTR(S) Regs
- 21 Reg 90B CTR(S) Regs
- 22 **E** Reg 21(5) VTE(CTRA)(P) Regs  
**W** Reg 29(4) VTW Regs
- 23 **E** Regs 10 and 21(6) VTE(CTRA)(P) Regs  
**W** Reg 29(5) VTW Regs
- 24 **E** Reg 10(6) VTE(CTRA)(P) Regs
- 25 **E** Regs 25 and 28(2) VTE(CTRA)(P) Regs  
**W** Reg 40(5) VTW Regs
- 26 Reg 24 CT(ALA)(S) Regs
- 27 Reg 24 CT(ALA)(S) Regs
- 28 Reg 24 CT(ALA)(S) Regs

### 2. Matters that can be appealed

- 5 Reg 10(2) VTE(CTRA)(P) Regs
- 6 *Okon v Lewisham LB* [2016] EWHC 864 (Ch), All ER (D) 123 (Apr)
- 7 **E** Reg 10(2) CT(ALA)(E) Regs
- 8 **E** Reg 10(3) CT(ALA)(E) Regs
- 9 **E** Reg 7(6) CT(ALA) Regs  
**W** Reg 8(6) CT(ALA)(E) Regs
- 10 **E** Reg 7(7) CT(ALA)(E) Regs  
**W** Reg 8(7) CT(ALA) Regs
- 11 **E** Reg 9(3) CT(ALA)(E) Regs  
**W** Reg 10(3) CT(ALA) Regs

- 29 **E** Reg 21(4) VTE(CTRA)(P) Regs  
**W** Reg 29(3) VTW Regs
  - 30 **E** Reg 21(6) VTE(CTRA)(P) Regs  
**W** Reg 29(5) VTW Regs
  - 31 Reg 30 VTW Regs
  - 32 **E** Reg 28 VTE(CTRA)(P) Regs  
**W** Reg 30(5) VTW Regs
  - 33 Reg 23 CT(ALA)(S) Regs
  - 34 Reg 23 CT(ALA)(S) Regs
  - 35 Reg 23 CT(ALA)(S) Regs
  - 36 s13A(1)(c) LGFA 1992
  - 37 See the judgment in *Morgan v Warwick DC* [2015] RVR 224
  - 38 *S and CW v East Riding of Yorkshire Council*, Appeal Nos.2001M113393 and 2001M11750327, May 2014
  - 39 *British Oxygen Ltd v Board of Trade* [1971] AC 610
  - 40 *Associated Provincial Picture Houses v The Wednesbury Corporation* [1948] 1 KB 223
  - 41 VTE CPS 2020, PS10, para 3
- 3. How to appeal**
- 42 **EW** Reg 37 VCCT(Amdt) Regs  
**E** Reg 20A VTE(CTRA)(P) Regs  
**W** Reg 30(1) VTW Regs
  - 43 **E** Reg 20A VTE(CTRA)(P) Regs  
**W** Reg 30 VTW Regs
  - 44 Reg 17(2)(b)(i) VTE(CTRA)(P) Regs
  - 45 Regs 10(1) and 17(2)(b) VTE(CTRA)(P) Regs; Council Tax Reduction Appeals Practice Statement, VTE/PS/A11, President's Note, para 13
  - 46 Reg 22 CT(ALA)(S) Regs
  - 47 Reg 22 CT(ALA)(S) Regs
  - 48 Reg 22 CT(ALA)(S) Regs
- 4. How appeals are dealt with**
- 49 **E** VTE(CTRA)(P) Regs  
**W** CT(ALA) Regs; VTW Regs  
**S** CT(ALA)(S) Regs
  - 50 **EW** Reg 20 CT(ALA) Regs  
**E** Reg 29(1) VTE(CTRA)(P) Regs  
**W** Reg 33 VTW Regs  
**S** Reg 27 CT(ALA)(S) Regs
  - 51 **E** Reg 6 VTE(CTRA)(P) Regs
  - 52 Reg 13 CT(ALA)(E) Regs; reg 19(7) VTE(CTRA)(P) Regs
  - 53 VTE CPS 2020, PS16, para 5
  - 54 Reg 33(1) VTW Regs
  - 55 **E** Reg 20 CT(ALA) Regs; reg 29(1) VTE(CTRA)(P) Regs  
**W** Reg 33(1) VTW Regs  
**S** Reg 27 CT(ALA)(S) Regs
  - 56 Reg 27 CT(ALA)(S) Regs
  - 57 Reg 27 CT(ALA)(S) Regs
  - 58 Reg 27 CT(ALA)(S) Regs
- 59 **E** Reg 6 VTE(CTRA)(P) Regs  
**W** Reg 21 CT(ALA) Regs
  - 60 Reg 21 VTE(CTRA)(P) Regs; reg 10 CT(ALA)(E) Regs
  - 61 VTE CPS 2020, PS1, para 7
  - 62 *Malt Ltd & Others v Mr C Jones & Others (VOS)* [2017] UKUT 460 (LC) UTLC Case Nos: RA/7-10 et al; *Denton v TH White Ltd and another* [2014] EWCA Civ1537
  - 63 VTE CPS 2020, PS1, para 9
  - 64 *Giraffe Concepts Ltd v Jackson (VO)* [2018] UKUT 344 LC
  - 65 **E** Reg 7(3) VTE(CTRA)(P) Regs
  - 66 **E** Reg 7(4) (CTRA)(P) Regs
  - 67 *Cselko v Listing Officer Camden and LB Camden* [1997] CO/995/95
  - 68 **E** Reg 19 VTE(CTRA)(P) Regs  
**W** Reg 32(1) VTW Regs
  - 69 Reg 32(1) VTW Regs
  - 70 Reg 26 CT(ALA)(S) Regs
  - 71 Reg 19(4) and (5) VTE(CTRA)(P) Regs
  - 72 *Wiltshire Council v Piggitt* [2014] EWHC 4386 (Admin)
  - 73 Reg 19(8) VTE(CTRA)(P) Regs
  - 74 Reg 2 VTE(CTRA)(P) Regs
- 5. Appeal hearings**
- 75 VTE, Protocol 2A(a), COVID-19 Virus Emergency Variation of Practice, 29 July 2020, available at [valuationtribunal.gov.uk/wp-content/uploads/2020/07/Covid-19-Emergency-Practice-Statement-200729-2.pdf](http://valuationtribunal.gov.uk/wp-content/uploads/2020/07/Covid-19-Emergency-Practice-Statement-200729-2.pdf)
  - 76 VTW, Best Practice Protocol 2A(a), Remote Hearings Through the Use of Video Conferencing Software
  - 77 VTE CPS 2020, PS4
  - 78 VTE CPS 2020, PS4, para 4
  - 79 *The Governor and Company of the Bank of Ireland v Jaffery* [2012] EWHC 734
  - 80 VTE CPS 2020, PS4, para 6
  - 81 VTE CPS 2020, PS4, para 7
  - 82 **E** Reg 30 VTE(CTRA)(P) Regs. The president, vice presidents and nominated senior members may sit alone as the tribunal.
  - 83 **E** Reg 30 VTE(CTRA)(P) Regs  
**W** Reg 34(1) VTW Regs
  - 84 Reg 28 CT(ALA)(S) Regs
  - 85 Reg 32(2) VTW Regs
  - 86 Reg 28 CT(ALA)(S) Regs
  - 87 **W** Reg 33(3) VTW Regs  
**S** Reg 28 CT(ALA)(S) Regs
  - 88 **E** Reg 13 VTE(CTRA)(P) Regs  
**W** Reg 36 VTW Regs  
**S** Reg 34 CT(ALA)(S) Regs



- 89 **E** Reg 13 VTE(CTRA)(P) Regs  
**W** Reg 36 VTW Regs
- 90 Reg 13 Valuation Appeal Committee  
(Procedure in Appeals under the  
Valuation Acts) (Scotland) Regulations  
1995 No.572; reg 34 CT(ALA)(S) Regs
- 91 **EW** Reg 25 CT(ALA) Regs  
**E** Reg 32 VTE(CTRA)(P) Regs  
**W** Reg 37(2) VTW Regs
- 92 Practice Statement: Council Tax  
Reduction Appeals, VTE/PS/A11: 1  
November 2015, para 34
- 93 Reg 14(1) VTE(CTRA)(P) Regs
- 94 Reg 14(2) VTE(CTRA)(P) Regs
- 95 s1 Bank and Financial Dealings Act 1971
- 96 VTW, Best Practice Protocol 1F, para 3
- 97 Reg 38(3)VTW Regs; VTW, Best Practice  
Protocol 1F, paras 3 and 4
- 98 Reg 17(2)(b)(i) VTE(CTRA)(P) Regs
- 99 Reg 17(2) VTE(CTRA)(P) Regs
- 100 VTW Best Practice Protocol 1F –  
Evidence, para 4
- 101 Reg 9(1) VTE(CTRA)(P) Regs
- 102 Reg 6(1)(i) VTE(CTRA)(P) Regs
- 103 **E** VTE, COVID-19 Virus Emergency  
Variation of Practice  
**W** VTW, Best Practice Protocol 2A(a)  
*Remote Hearings Through the Use of  
Video Conferencing Software*
- 104 *Municipio de Mariana & Ors v BHP Group  
plc* [2020] EWHC 928
- 105 VTW, Best Practice Protocol 2A(a)  
*Remote Hearings Through the Use of  
Video Conferencing Software*, para 8
- 106 **EW** Reg 25 CT(ALA) Regs  
**E** Reg 31 VTE(CTRA)(P) Regs  
**W** Reg 37 VTW Regs as amended by reg  
2(6) VTW(A) Regs
- 107 Reg 32 CT(ALA)(S) Regs
- 108 VTE CPS 2020, PS12
- 109 **EW** Reg 25 CT(ALA) Regs  
**E** Reg 10 VTE(CTRA)(P) Regs  
**W** Reg 32A(1)–(3) VTW Regs  
**S** Reg 31 CT(ALA)(S) Regs
- 110 **E** Reg 40 VTE(CTRA)(P) Regs  
**W** Reg 42(5)(b) VTW Regs
- 111 Reg 31 CT(ALA)(S) Regs
- 112 **EW** Reg 25(5) CT(ALA) Regs; reg 44(4)  
VCCT(A) Regs  
**E** Reg 32 VTE(CTRA)(P) Regs
- 113 VTE CPS 2020, PS8, para 12
- 114 VTE CPS 2020, PS8, para 15
- 115 **E** Reg 17(1)(e) VTE (CTRA) Regs  
**S** Reg 33 CT(ALA)(S) Regs
- 116 VTE CPS 2020, PS8, para 13
- 117 **E** Regs 6 and 30 VTE(CTRA)(P) Regs; VTE  
CPS 2020, PS4, para 11  
**W** Reg 34(4) VTW Regs
- 118 Reg 18 VTE(CTRA)(P) Regs
- 119 **EW** *Garton v Hunter (Valuation Officer)*  
[1969] 2 QBD 37  
**E** Reg 17 VTE(CTRA)(P) Regs  
**W** Reg 37(9) VTW Regs
- 120 *Morgan v Dew* [1964] RA 294
- 121 **E** Reg 17 VTE(CTRA)(P) Regs  
**W** Reg 38 VTW Regs
- 122 Reg 17 VTE(CTRA)(P) Regs
- 123 Reg 17 VTE(CTRA)(P) Regs
- 124 Reg 29 CT(ALA)(S) Regs
- 125 Reg 29 CT(ALA)(S) Regs
- 126 Reg 30 CT(ALA)(S) Regs
- 127 Reg 30 CT(ALA)(S) Regs
- 128 Reg 30 CT(ALA)(S) Regs
- 129 Reg 30 CT(ALA)(S) Regs
- 130 Reg 30 CT(ALA)(S) Regs
- 131 VTE CPS 2020, Part 1, para 15 VTE
- 132 **E** Reg 36 VTE(CTRA) Regs  
**W** Reg 40(2) VTW Regs
- 133 **E** Reg 37 VTE(CTRA)(P) Regs as  
amended by reg 2(6) VTE(CTRA)(P)(A)  
Regs  
**W** Reg 40(3) VTW Regs
- 134 Reg 36 CT(ALA)(S) Regs
- 135 *R v Housing Benefit Review Board of South  
Tynside MBC ex parte Tooley* [1995] QBD,  
CO/3893/94, Ognall, J
- 136 *George Davidson v Central Scotland  
Valuation Joint Board* [2011] CSH 15
- 137 *Lone v LB Hounslow* [2019] EWCA Civ  
2206
- 138 **E** Reg 38(1) VTE(CTRA)(P) Regs  
**W** Reg 41 VTW Regs
- 139 Reg 38(7) VTE(CTRA) Regs
- 140 Reg 37(1) CT(ALA)(S) Regs
- 141 Reg 37(3) CT(ALA)(S) Regs
- 142 Reg 37(4) CT(ALA)(S) Regs
- 143 *Assessor for Lothian Valuation Joint Board  
v McLaughlin* [2020] CSH 16 Scot (D)  
11/4
- 144 VTE CPS 2020, PS15, para 1(ii)
- 145 VTE CPS 2020, PS15
- 146 **E** *West Midlands Baptist (Trust)  
Association (Incorporated) v Birmingham  
City Council* [1967] RVR 780 (CA)  
**S** *Assessor for Highland and Western Isles  
Valuation Joint Board v Fraser* [2001] SC  
473
- 147 **E** Reg 41 VTE(CTRA)(P) Regs  
**W** Reg 31 and Sch 4 CT(ALA) Regs
- 148 **E** Reg 41 VTE(CTRA)(P) Regs
- 149 **E** Reg 41 VTE(CTRA)(P) Regs  
**W** Reg 43 VTW Regs
- 150 **E** Reg 41 VTE(CTRA)(P) Regs  
**W** Reg 50 VTW Regs
- 151 **E** Reg 39 VTE(CTRA)(P) Regs  
**W** Reg 43(7) VTW Reg

152 **E** Reg 41(6) VTE(CTRA)(P) Regs

**W** Reg 42(1) VTW Regs

153 **S** Reg 35 CT(ALA)(S) Regs

### 6. Reviews of tribunal and committee decisions

154 **E** Reg 40 VTE(CTRA)(P) Regs

**W** Reg 42(1) VTW Regs

155 **E** Reg 40 VTE(CTRA)(P) Regs

**W** Reg 49 VTW Regs

156 VTE CPS PS13 para 1

157 **E** Reg 40(7) VTE(CTRA)(P) Regs

**W** Reg 44(2) VTW Regs

158 **E** Reg 41(10) VTE(CTRA)(P) Regs

**W** Reg 42(9) VTW Regs

159 Para 10 VTW Best Practice Protocol 3A;  
reg 42 VTW Regs

160 *Bracegirdle v Oxley* [1947] 1 KB 349;  
*Edwards v Bairstow and another* [1956]  
AC 14; *Hayes v Humberside Valuation  
Tribunal and Kingston Upon Hull City  
Council* [1998] RA 37

161 *Humphrey v Fenland DC* [2018] EWHC  
2195

162 *Vaughan v Valuation Tribunal* [2013]  
EWHC 1885 (Admin)

163 *Georgiou v Customs and Excise  
Commissioners* [1996] STC 463, per  
Evans LJ at 476; *Ramdhun v The  
Valuation Tribunal of England* [2014]  
EWHC 946 (Admin)

164 *Macatram v LB Camden* [2012] RA 369

165 CPR 52.21(1); *Salsbury v Law Society*  
[2008] EWCA Civ 1285, reported as  
[2009] 1 WLR 1286

166 *Adesemowo v Solicitors Regulation  
Authority* [2013] EWHC 2020 (Admin)

167 See *Wiltshire Council v Piggin* [2014]  
EWHC 4386 (Admin)

168 *R v London South Eastern Valuation  
Tribunal and Neale (LO)*, *ex parte Moore*  
[2001] RVR 94

169 *R v London South West Valuation Tribunal  
ex parte de Melo* [2000] RVR 73

170 s82(4) LGFA 1992; *Dundee City Council v  
Dundee Valuation Appeal Committee and  
another* [2011] CSIH 73

## Chapter 12

# Complaints about council tax administration

**This chapter covers:**

1. Complaining to the local authority (below)
2. Complaints to the Ombudsman (p294)
3. Complaints to the local auditor (p311)
4. Action through the courts (p312)

## 1. Complaining to the local authority

If you disagree with your council tax bill or you have been treated badly by a local authority, or someone providing services on its behalf, you can complain. This includes matters such as delays, discourtesy, poor administration, bad advice or the way a department's policies impact you. Every local authority has a complaints procedure and you must use it in the first instance to try to resolve your complaint.

The first stage is to take your complaint to the council department concerned. In most cases involving council tax, this is the Revenues and Benefits Department or the Finance Department, depending upon how your council is organised. You can find details of the complaints procedure on the local authority's website, or by contacting it directly. You should follow the council's published complaints procedure. Not being able to obtain a copy of the complaints procedure can form part of your complaint.

The initial complaint to the local authority should set out the specific details of what has taken place and the effect it has had on you. It is best that such complaints are written in clear and polite language and without using emotive or abusive language. (Extremes of language or unsubstantiated allegations are only likely to result in a complaint being viewed in a less favourable light on any impartial review.)

Information to support your complaint can be obtained by way of requests under the Freedom of Information Act 2000. Use may be made of the Data Protection Act 2018 and subject access requests for personal data. Where an authority declines to answer a request for information, you may make an

application to the Information Commissioner or the Scottish Information Commissioner.<sup>1</sup>

If you are unhappy with the final outcome of your complaint, or the council is taking too long to look into the matter (12 weeks is considered reasonable), you can complain to the Ombudsman (see below). You should usually make your complaint within 12 months of realising the maladministration.

If you are considering any other route of legal challenge (eg, judicial review), this needs to be commenced within three months of the cause of action, so this deadline has to be considered.

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## **2. Complaints to the Ombudsman**

The role of the Ombudsman is to independently and impartially investigate complaints of maladministration by government departments, including avoidable delays, failure to advise about appeal rights or refusal to answer reasonable questions or respond to correspondence, discourteousness, racism or sexism. The Ombudsman may recommend redress which is proportionate, appropriate and reasonable based on the facts. It is a free service and complaints can be submitted online. Before complaining to the Ombudsman, you must have tried to resolve it with the local authority first and completed all the stages of its complaints procedure or 12 weeks have passed since you first made your complaint and the local authority has not responded.

The Parliamentary and Health Service Ombudsman deals with complaints about central government. Complaints against councils and other local government bodies are investigated by:<sup>2</sup>

- the Local Government and Social Care Ombudsman in England;
- the Public Services Ombudsman for Wales;
- the Scottish Public Services Ombudsman.

The Ombudsman in each country has the power to look into many different types of error which do not generate a right to take court action, but nonetheless give grounds for complaint.

The Ombudsman may investigate maladministration by any district, borough, city or county council and, therefore, can deal with mistakes by billing authorities in administering council tax. In 2018/19, the Ombudsman in England investigated 1,815 complaints relating to local taxation and benefits, resulting in 282 detailed investigations with 66 per cent of complaints upheld.

The Ombudsman has statutory power to commence investigations into complaints that fall within the jurisdiction granted by statute and also stop investigations when considered appropriate.<sup>3</sup>



***Ombudsman complaints during the coronavirus pandemic***

The Ombudsman service in each country is encouraging complaints be made online and for correspondence to be by email where possible. They are asking for complaints not to be made about matters which are likely to resolve themselves within the next few weeks or months and about delays in service delivery which are the result of organisations having to cope with coronavirus and which are non-essential.

**Maladministration the Ombudsman can investigate**

‘Maladministration’ is an open-ended term covering a wide range of bureaucratic mistakes and abuses. It is not defined in law and when the term was first introduced into parliament, it was considered to include ‘bias, neglect, delay, incompetence and inaptitude, arbitrariness and so on’ on the part of public authorities.<sup>4</sup> It has been judicially considered that maladministration ‘in the context of the work of a local authority, is concerned with the *manner* in which decisions by the authority are reached and the *manner* in which they are or are not implemented’.<sup>5</sup>

Maladministration can cover many forms of bureaucratic wrongdoing which may not be serious enough to justify court proceedings, but which nonetheless can cause injustice – eg, delays in answering letters or losing records. It can include many forms of improper behaviour by local government staff, whether through lack of care or deliberate wrongdoing.

Specific examples of maladministration relating to council tax include instances where an authority:

- fails to give you information about reductions you are entitled to or your right of appeal;
- fails to tell you about, or consider, an application for a discretionary council tax reduction;
- fails to act on information provided which affects liability to council tax or entitlement to discounts or exemptions;
- allows delays in dealing with disputes;
- makes mistakes in dealing with payments – eg, not crediting them to your account, allocating them to a wrong account or failing to credit council tax support you have been awarded;
- seeks a liability order after an undertaking has been given not to obtain one or obtains an order against a person who has offered to pay the sum in full;
- continues to take recovery action after any debt is paid or where an agreement to pay a debt is kept;
- fails to follow paragraphs 70–78 of the *Taking Control of Goods: National Standards* regarding vulnerable people (see Appendix 2).

The Ombudsman will not challenge council policy but will consider whether its stated policy is being carried out reasonably and correctly.

In Scotland, the Scottish Public Services Ombudsman may investigate any action taken by or on behalf of the authority including any service failure, but only, so far as the former, where there has been maladministration, and in respect of both, only where there is alleged injustice or hardship as a consequence of the maladministration or service failure.<sup>6</sup>

In the course of the investigation, the Ombudsman has powers equivalent to a court in that it may call witnesses from the local authority and require the production of documents.<sup>7</sup>

## Injustice

The Ombudsman intervenes in cases which have resulted in injustice, caused by a local authority but which it has failed to redress adequately or at all. The concept of 'injustice' is a wide one and open to different interpretations. Arguably, it should mean more than a trivial problem or minor inconvenience, although much will depend on the actual effect of the error on the individual taxpayer concerned. Maladministration causing you nuisance, embarrassment, financial loss or serious inconvenience and distress falls within the remit of injustice. For example, a delay in replying to correspondence which results in extra charges or fees could amount to injustice,<sup>8</sup> as can billing mistakes where you are wrongly informed that a bill has been paid in full only to find the local authority subsequently imposes a higher bill.<sup>9</sup>

However, a complaint to the Ombudsman should not be used simply as a way of 'getting back' at a local authority or simply to get particular officials into trouble. Neither should a complaint be brought simply because you dislike the council taking steps to recover money owed. Similarly, if a local authority has taken steps to correct an injustice and you are satisfied, the Ombudsman cannot be expected to take the matter any further.

Because of its complexity, the administration of council tax can frequently generate errors which, if uncorrected, may result in inconvenience, stress and embarrassment to taxpayers. Even when a mistake is discovered, the local authority may not act properly or quickly enough to remedy the problem.

For example, a local authority may fail to record an entitlement to a discount, repeatedly list the wrong person on a bill or fail to award payment to the correct account. This may result in sending reminder notices to, and summonses against, a person who has actually paid the tax or who is exempt. The authority may delay sending information or bills, causing 'prejudice' to the taxpayer (see p185) and unnecessary enforcement action. Problems may also be caused by sending demands in the names of people who have died after the local authority has been informed of the death, or failing to record that someone is severely mentally impaired. In such cases, it is often unrealistic to expect taxpayers to be able to contend with court and tribunal proceedings as an alternative to bringing a complaint but it may be difficult to achieve a remedy through the Ombudsman as an alternative.

## Outsourced services

When a council outsources its services, it can be more difficult to make effective complaints. Both the outsourced company and the council can be liable for errors and mistakes; ultimately the council can be liable for having selected a negligent subcontractor to perform its functions or for failing to control a subcontractor properly.

## Interdepartmental inefficiency

Inadequate liaison between accounts, enforcement and the reduction sections in a local authority may generate problems. For example, although court action may be suspended, computerised enforcement systems may continue to issue warning letters even when the local authority has assured a person the mistake has been remedied. A local authority is not entitled to hide behind an excuse of 'computer error' to cover up inefficiency in such cases.

## Council tax reduction issues

Maladministration can occur when a local authority does not follow its council tax reduction (CTR) policy correctly or does not have clear, accessible information on its website. In particular, the Local Government and Social Care Ombudsman found that it can be difficult to find 'clear explanations in council policies of what CTR reversals are, and how council deal with them'.<sup>10</sup> Maladministration can occur where the local authority does not explain how to challenge a decision to recover CTR.

Another form of maladministration is an unreasonable delay in processing a CTR application. Although you may ultimately receive CTR after a long delay, you may face considerable inconvenience, stress, financial difficulty and embarrassment in the meantime. Significantly, the Ombudsman does not consider automatically issuing a summons against a person who is waiting for CTR to be calculated to be 'fair or reasonable' and that a local authority 'should take into account the circumstances of the individual before taking such action'.<sup>11</sup>

## Refusal to accept evidence

In some cases, maladministration occurs where the authority refuses to accept evidence submitted in an application for CTR or makes repeated requests for information that has already been supplied.

In such a case, you may serve a witness statement for establishing the truth of what you are saying, and also give notice of an intention to escalate the complaint to the civil courts or tribunal if the issue is not resolved in your favour.

A witness statement should set out the facts and calculations and deal with any matter the local authority has hitherto refused to be satisfied about. It may also include copies of documents as exhibits and must carry a statement of truth.<sup>12</sup>

The witness statement should include the address of the local County Court, as that is where an action may be founded against the authority and its staff, or alternatively, the valuation tribunal where an appeal may be heard.

A sworn witness statement is evidence for all purposes in civil and criminal proceedings and is the strongest evidence that can be provided, save for sworn evidence given orally in proceedings. It is to be preferred to anything that a local authority may say or provide that is unsworn. Furthermore, it must be accepted by any court or tribunal as the truth, unless contrary evidence is provided which undermines the truth of the statement or the witness is discredited by cross-examination.

Since a witness statement is the most conclusive evidence that you can provide, the local authority will err in law if it refuses to act upon the information contained in it. Refusal by the local authority to consider evidence placed before it can place the local authority in breach of its statutory duties, generating grounds for a complaint and potential legal action against the authority or officials concerned.

Councils should ensure complaint investigations carried out on their behalf by contractors are conducted rigorously. This can include accepting body camera evidence used by bailiffs.

### **Late billing and enforcement**

An increasingly common form of maladministration is late enforcement action, sometimes years after an alleged liability arose (see see p211).

Increasingly, complaints also relate to enforcement action once a case has been passed to enforcement agents. Although the system of new fees allows court action to be taken in a case of excessive charging, the Ombudsman is nonetheless prepared to investigate the conduct of a billing authority which has instructed the enforcement agents concerned.<sup>13</sup>

A complaint can sometimes be the most effective way to challenge a decision to send out a bill or begin an enforcement proceeding several years after the alleged liability. The complaint means that the alleged liability will be investigated, aside from any question of an appeal to the valuation tribunal. The investigation of the complaint can look into the circumstances as to why the delay in enforcing an old liability arose, whether there was proper record keeping and the reasonableness of any decision to pursue an old liability on the facts. For example, where a local authority suddenly serves a demand notice, an investigation should be commenced into why it was suddenly decided that money was outstanding and the failures which led to the delay in taking a decision.

### **Offsetting against existing debt**

The Ombudsman may conduct an investigation and recommend a remedy including an award of compensation even though you may actually owe a debt to



the council that remains unpaid. Where you have an existing debt with the council, the Ombudsman may direct that the compensation should be used to offset or reduce the outstanding amount. The Ombudsman may also make a separate award in relation to mental distress and anxiety.<sup>14</sup>

### Disproportionate and unjust enforcement

The Ombudsman may consider whether enforcement action has been excessive, disproportionate or unjustified. In a 2014 case, the Ombudsman found injustice where the council had failed to properly consider the debt situation of a man willing to pay, his offers to pay were refused and the council issued a summons and used bailiffs.<sup>15</sup>

### Matters that the Ombudsman cannot examine

Matters that the Ombudsman cannot investigate include:

- the amount of tax set by the local authority;
- decisions of courts or the Valuation Tribunal for England (VTE), Valuation Tribunal for Wales (VTW) and valuation appeal committees in Scotland;
- who is liable for council tax;
- decisions about banding;
- the conduct of court proceedings. These matters can only be challenged through the High Court or the VTE/VTW or valuation appeal committees in Scotland when they are within the specific jurisdiction of these bodies – eg, whether you should be liable for council tax. The Ombudsman expects councils to signpost to the correct place to go where the complaint should be pursued as an appeal, unless it would be unreasonable to expect you to be able to do this – eg, due to disability;<sup>16</sup>
- cases where the remedy is a proceeding in a court of law, a valuation tribunal or where an appeal lies to a Minister of the Crown.<sup>17</sup>

Matters that are outside the jurisdiction of the Ombudsman, such as alleged breaches of the Data Protection Act and GDPR, generally cannot be investigated, as these fall within the remit of the Information Commissioner.<sup>18</sup> However, some overlap may arise with data protection issues and body camera footage used by bailiffs acting on behalf of a council to enforce a council tax debt (see Chapter 10).

The Ombudsman cannot investigate other bodies which may be involved with recovering council tax – eg, the DWP making deductions from benefits.<sup>19</sup> Any complaint about the performance of the DWP has to be raised via its complaints procedure and with the Parliamentary Ombudsman.

There are situations where the Ombudsman exercises discretion and accepts an early resolution and settlement of the problem. For example, the case of a council that failed to reply to a letter sent six months earlier regarding its failure to award a council tax rebate after an assurance it would do so. On receipt of the complaint, the Ombudsman contacted the council and learned there had been a

misunderstanding from human error rather than procedural error. The council agreed to reply to the complaint and apologise for the delay and make a £50 compensation payment.<sup>20</sup>

The Ombudsman does not usually interfere with a correct decision to implement an enforcement measure but may order redress where the service has been poor. For example, in a complaint against Birmingham City Council in 2016, the Ombudsman criticised the failure of the council to keep a proper record of payments made by an employer after an attachment of earnings order was obtained against a debtor but credited to the wrong account.<sup>21</sup> The debtor spent nine months trying to resolve the matter and the council failed to respond adequately to her complaint, gave incorrect advice and delayed in tracing the money and resolving the situation. Following the Ombudsman investigation, the council apologised and paid compensation.

The Ombudsman may not investigate a complaint if it is a matter where you have a right of appeal or have appealed to a tribunal.<sup>22</sup> Nonetheless, s/he may decide to investigate a complaint if s/he considers it would be unreasonable for you to have to do so or if there are other issues outside the scope of the tribunal.<sup>23</sup> The Ombudsman may also accept that a local authority has taken steps by its own initiative to settle a complaint through its own means – eg, the payment of £100 in compensation for the wrongful issue of a summons.<sup>24</sup>

## Making a complaint to the Ombudsman

The Ombudsman investigates complaints from:

- individuals;
- family members of individuals;
- advice agencies acting on behalf of individuals.

The Ombudsman expects you to have fully exhausted the local authority's complaints process first (see p293).

In Wales, an alternative resolution of matters may be adopted by the Ombudsman who may take 'any action the Ombudsman thinks appropriate with a view to resolving a matter' instead of conducting an investigation. Any such action must be done in private.<sup>25</sup>

Guidance on bringing a complaint is available at [lgo.org.uk](http://lgo.org.uk) (England), at [ombudsman.wales](http://ombudsman.wales) (Wales) and [spso.org.uk](http://spso.org.uk) (Scotland). You are usually expected to make your complaint using the online form. You can telephone the Ombudsman's helplines (see Appendix 1) if you cannot go online or to discuss your complaint with an adviser.

When bringing a complaint, it is usually a good idea to include a short chronology of events and correspondence, to provide a summary of key dates and the history of the matter, particularly if the case is complex. You should list the dates as accurately as possible and the event which occurred – eg, what the local

authority did or did not do. Copies of all the relevant correspondence should also be submitted with the initial application, in order that the Ombudsman may begin analysis of the case with all the relevant information.

On receipt of your application, the Ombudsman will normally assign a caseworker to deal with your complaint. The caseworker will contact you or your adviser as well as the local authority.

The Ombudsman may decide not to start or continue with an investigation if:

- it is unlikely fault by the council would be found;
- the injustice is not significant enough to justify the cost of involvement;
- it is unlikely anything may be added to any previous investigation of the council;
- the outcome you want cannot be achieved.

If the Ombudsman is satisfied with a council's actions or proposed actions, the investigation can be completed and a decision statement issued.<sup>26</sup>

## Action the Ombudsman can take

Where the Ombudsman finds that the local authority is at fault, it can ask the council to:

- take action to put the matter right – eg, issuing the correct bill; *or*
- ensure that payments you have made or CTR awards are properly credited to your account; *or*
- deal with your correspondence or appeal; *or*
- withdraw enforcement action and waive costs where appropriate; *or*
- pay you compensation.

There is no system to enforce an award of compensation but, in practice, local authorities usually accept the findings made by the Ombudsman and it is rare for a local authority to refuse to pay. In addition, an authority in England and the London Assembly has a specific power to pay compensation.<sup>27</sup> It should be noted that sums recommended in compensation have not kept up with inflation. For example, in a case reported in January 2005 concerning delays in processing housing and council tax benefit the Ombudsman found maladministration and made a recommendation that the Council pay £500 in respect of stress and court costs.<sup>28</sup> In 2017, the largest published award for council tax maladministration remained at £500 for a case where bankruptcy proceedings had been instigated.<sup>29</sup> This pattern of low-level awards has continued into 2020 and may influence the decision of whether to take civil proceedings as an alternative.

Directions may also be issued to local authorities to change their procedures to prevent the problem reoccurring.

## **Examples of Ombudsman complaints and settlements**

The following cases are examples of complaints of maladministration involving council tax which have been upheld. Cases often depend on their individual facts, but the settlement figures give an indication of the size of any award.

### ***Suicide of taxpayer***

*Southwark Borough Council (00/A/19293 [2002] RVR 289) September 2002*

The complaint was brought by relatives of a taxpayer who had committed suicide after receiving a summons for non-payment of council tax. The taxpayer was a single man with learning difficulties receiving benefits. In October 2000, his council tax benefit was cancelled and he was sent a fresh form to complete. Four days later he was sent a demand for £235.10 payable in instalments. The taxpayer visited the local authority's office and submitted a claim form, but the local authority continued recovery action. The taxpayer applied again for council tax benefit and provided information on his entitlement to jobseeker's allowance. Nonetheless, a summons was issued again for £235.10. The summons was accompanied by an additional sheet warning that bailiffs or imprisonment could follow the granting of a liability order. The taxpayer hanged himself in his flat. The police found the opened summons and a suicide note referring to his debt problems. Relatives of the deceased complained to the council but did not receive a satisfactory response.

**Outcome:** it was considered that the three-and-a-half-month delay in processing benefit amounted to maladministration. Further maladministration was found in sending out a summons while the relevant benefit claim had yet to be determined. The Ombudsman said that the summons had contributed to the distress and anxiety suffered by the deceased. The way in which the local authority had responded to relatives was also criticised. A settlement of £3,200 to the family of the deceased and £1,000 payment to a charity of their choice was approved.

### ***Pursuing a dead taxpayer***

*Norfolk County Council (19 011 895) 23 March 2020*

The council admitted delay in its assessment of Mrs D's needs when she was staying in a care home after a hospital discharge and finding a placement for her to move to. After she died, the authority delayed in pursuing a council tax debt. Mr C complained on behalf of his deceased mother. He complained the council should not have charged Mrs D for the time she spent in a care home after a hospital discharge and that the council failed to chase the debt for 18 months after her death.

**Outcome:** the council offered to reduce the outstanding debt from £3,100 to £1,777 and the Ombudsman ruled this was an appropriate remedy for the injustice.

### ***Unnecessary recovery action***

*Hackney Borough Council (03/A/09613) 7 October 2004*

The complainant, Ms Murray (pseudonym), set up a standing order to pay council tax in April 1998. In July 1998, Hackney Council realised that, because there was no council tax



reference number on the standing order form, payments received were not being allocated to Ms Murray's account. Despite assurances from Hackney on several occasions that it would rectify the problem, this was not achieved until January 2004. Arrears for 1998/99 were wrongly carried forward each year and it began unnecessary recovery actions including summonses, liability orders and letters from bailiffs.

**Outcome:** the Ombudsman found maladministration and recommended that the council pay £1,800 compensation and undertake changes to its accounting systems.

### ***Wrongful attribution of liability***

*Oxford City Council and Southwark Borough Council (02/B/09186 and 02/B/16542) 8 October 2003*

A complaint was brought by Mr D Parry (pseudonym) that Oxford City Council was making deductions from his benefit for arrears of council tax. Mr Parry had been a student in Oxford over 30 years earlier but had not lived there since. The Ombudsman found that Oxford Council had believed that its debtor, another Mr D Parry, had moved from Oxford to London NW2, but when they could not find him there, they found the complainant living in SE15. This alone convinced it that it was the same debtor and it contacted Southwark Borough Council. Although Mr Parry had been a council tenant with Southwark for many years, Southwark Borough Council released information to enable deductions from his benefit and further compounded the error with delays in refunding his benefit.

**Outcome:** the Ombudsman found maladministration in the 'bizarre treatment' of the complainant and considered that depriving him of money while he was on a very low income must have resulted in difficulty. It was recommended that Oxford City Council pay £750 and Southwark pay £250 to the complainant.

### ***Failure to record a verbal agreement***

*Aberdeen City Council (200502645) 30 November 2006*

Mrs C alleged that a verbal payment agreement for council tax was not recorded or honoured by Aberdeen City Council. A verbal agreement reached between Mrs C and a member of staff about her payment schedule for council tax was not recorded with the result that a summary warrant was issued.

**Outcome:** the Ombudsman recommended that the council devised and pilot a clear procedure for staff updating customer records once a verbal payment agreement has been reached via a face-to-face discussion. Ideally, this would include the production of a signed agreement which both parties could keep as a record. The council was directed to write an apology to Mrs C for the inconvenience and distress caused by the issue of an unnecessary summary warrant.

### ***Failure to provide certificates of account***

*Glasgow City Council (201504898) May 2016*

Mr and Mrs C requested certificates confirming their council tax payments were up to date when they were purchasing their housing association property. The council said one certificate could not be issued for Mrs C because she had council tax arrears. The council said the debt would need to be managed by their debt management partner. The council took around six weeks to deal with the enquiry. The council provided inaccurate

information to Mrs C by failing to include arrears from a previous address. The council also failed to pass the correct information to the debt management partner, which meant that Mrs C was only asked to pay a portion of the total amount outstanding. This caused a further delay. It was not until after Mr C complained that the council realised it had not notified Mr and Mrs C about arrears that Mrs C had at a previous address. All of this amounted to unreasonable confusion.

**Outcome:** the Ombudsman recommended the council apologise for the multiple failings identified and provide a balanced account which set out exactly what was owed in council tax, broken down by year, which accounted for all the amounts paid, any charges added, and any amounts written off.

### ***Unnecessary court attendance***

*Sandwell Metropolitan Council (No 03/B/12862) September 2004*

Sandwell Council issued a summons when a council tax benefit claim was pending, the complainant having provided all the necessary information. It proceeded with court action even after the benefit claim had been assessed and the complainant did not owe the money that was being sought. As a result, the complainant overpaid his council tax by £400. A further incorrect bill was issued requiring the complainant to pay another £196. The taxpayer complained to Sandwell Council and the sums were later credited and repaid to him, but not for several months. The taxpayer was forced to attend an unnecessary court hearing and the local authority delayed in answering correspondence.

**Outcome:** although the local authority had refunded money to the taxpayer, the Ombudsman found maladministration causing injustice. There had been inadequate liaison between the accounts and benefits sections of the revenues department and the taxpayer had experienced stress, inconvenience and an unnecessary attendance at court. Sandwell Council had also delayed in replying to the taxpayer's complaints. The Ombudsman recommended £400 compensation be paid and that the council review its procedures.

### ***Delayed appeal and bailiff action***

*Waltham Forest Borough Council (03/A/01900) 28 October 2003*

Mr Gower (pseudonym) complained that the council had unreasonably delayed assessing claims for housing benefit and council tax benefit, did not provide reasons on appeal and unreasonably took recovery action before his appeal had been determined. The Ombudsman considered that a delay of three months in assessing his claim was unreasonable and amounted to maladministration. The Ombudsman found that Mr Gower was caused prolonged anxiety by the slow progress of his claims and the growth in his rent and council tax arrears. Recovery action caused further stress, which was compounded when, after being told that the council would suspend bailiff action, he was nonetheless served with a bailiff notice threatening distress and removal of goods.

**Outcome:** the Ombudsman considered that an offer of £225 in settlement by the council was too low and recommended £500, together with a review of the way in which it communicated with its bailiffs.

### ***Wrongful seizure of car***

*Merton London Borough Council (18 010 732) 2 July 2020*

A complaint was made by a taxpayer who had her car seized by enforcement agents seeking to enforce a council tax debt and penalties for road traffic offences. The council did not consider her representations that the car was used for employment and was her 'tool of the trade' and she would be unable to work without it, and sent the car to auction. Although the complainant was able to raise funds and recover her car, when she failed to adhere to an agreed repayment schedule after incurring further debts, the car was seized again and sold at an auction.

**Outcome:** the investigation found that the council did not follow the statutory procedure under the Taking Control of Goods Regulations 2013, finding 20 faults in the way the council and its agents handled the debts. The council agreed to pay £1,050 for the woman's distress, time and the value of the car when sold at the auction. A clear breakdown of one of the woman's debts will be given to her, allowing her to put forward a payment plan.

### ***Refusal of discretionary reduction***

*Redcar and Cleveland Borough Council (05/C/03367) 27 September 2006*

In December 2004, the council decided that all empty homes in its area should pay the maximum 90 per cent council tax. Mr and Mrs Weaver (pseudonyms) bought a bungalow in the local authority district and renovated it, but then faced hostility from people in the area and decided not to move in. When they received a bill, Mrs Weaver wrote to explain their circumstances. The council refused the reduction, stating that it had set the maximum discount and that the scheme 'does not allow for any individual discretion'.

**Outcome:** the Ombudsman ruled that the blanket policy adopted by the council was wrong in law, and that the local authority had no basis for claiming it had no discretion on whether to grant a discount or not in individual cases. Parliament had given it a discretion and the Ombudsman said that a local authority should consider cases on an individual basis. The failure to do so amounted to maladministration, and the Ombudsman directed the authority to give proper consideration to Mrs Weaver's request and invite her to state her reasons for seeking the reduction. Having considered her reasons, the council was directed to give its reasons for either accepting or rejecting the application, as well as establishing proper arrangements for considering such cases in future.

### ***Failure to advise properly on discount***

*Rochdale Metropolitan Borough Council (19 004 521) 5 February 2020*

Mr X complained the council went back on an agreement to give him a 100 per cent discount on a council tax bill while his property was being refurbished.

**Outcome:** the Ombudsman found the council should have been clearer with Mr X about the terms of which discount was granted. The council should have told Mr X he could have appealed its decision to the valuation tribunal. The council was ordered to pay Mr X £150 and to review its policy on discounts for empty properties, ensuring that service users are sign posted to the tribunal if they wish to appeal a decision in relation to council tax discounts.

#### ***Bankruptcy as a disproportionate method of enforcement***

*Wolverhampton City Council (06B16600) 31 March 2008*

The local authority issued bankruptcy proceedings against a debtor owing council tax on a disputed debt of less than £2,000. This increased the debt to £38,000.

**Outcome:** the Ombudsman recommended that the council meet the costs of annulling the bankruptcy order. In his report, the Ombudsman said that a charging order should have been considered.

#### ***Maladministration causing injustice***

*London Borough of Camden (07A12661) 10 July 2008*

Camden Council's revenue team commenced bankruptcy proceedings for council tax arrears against a woman who, because of mental health difficulties, was unable to conduct her own affairs. Before doing so, it did not adequately record what checks it had made and did not check with the social care department, which would have shown that bankruptcy was not an appropriate recovery method.

**Outcome:** the Ombudsman found that one department of Camden Council knew of the woman's problems, but the revenue department did not find this out because it failed to make effective internal enquiries. The Ombudsman ruled: 'I do not think it unreasonable for revenue officers to look beyond their own departmental information and consider a council's records as a whole.' This was in line with data protection guidance issued by the Information Commissioner.

The Ombudsman found maladministration causing injustice. The council agreed to apply to court to annul the bankruptcy. On annulment, the Ombudsman recommended that the council should contact credit rating agencies to advise them of the position and that it should change its procedures to make stringent checks for potential vulnerability before taking action leading to bankruptcy, a charging order or committal.

#### ***Wrongful instigation of bankruptcy proceedings***

*Report on an Investigation into Complaint No 08 019 113 against the London Borough of Newham [2010] BPIR 464*

Ms Scott's mental illness affected her ability to manage her finances. The council was aware of this illness. Over a period of several years, council tax debts accumulated and the council finally made her bankrupt for these, despite being aware of her mental state. The council properly exercised its discretion to award Ms Scott an exemption due to her mental health for the post-bankruptcy debts, even though she did not fully qualify for the whole period. Ms Scott's solicitor applied to the court to have the bankruptcy annulled, on the grounds that she did not owe the debt as she was entitled to an exemption, but the courts rejected this application.

**Outcome:** the Ombudsman found maladministration. The council had been aware of Ms Scott's illness at the time it decided to make her bankrupt but did not consider, in view of this, if bankruptcy was a suitable recovery method. The council agreed to apply to the court to annul the bankruptcy and recommended that it exercised its discretion in deciding whether to backdate any mental health exemption, even if Ms Scott did not technically qualify.



### ***Wrongful pursuit of council tax debt after liability ceased***

*(Case reference confidential)*

The taxpayer 'Mr J' was involved in a long-running dispute with the council about liability for council tax on a property. He received a summons for two years' worth of arrears. Shortly before the hearing, the council issued a letter accepting he did not have sole or main residence and that liability was with a 'Mrs K'. The council requested details of when Mrs K vacated the property and a forwarding address. Nonetheless, the council pursued a liability order against Mr J and he was threatened with bailiffs. Mr J made a complaint, but received no reply for three months. The council still served four demand notices covering the previous three years.

**Outcome:** on investigation, the Ombudsman learned from the council that it had continued to pursue Mr J because he failed to provide the information on Mrs K. The Ombudsman found that this approach was incorrect. While not criticising the council for asking Mr J for that information, liability for the tax was not determined by the supply of information. The council had no legal basis on which to pursue Mr J for arrears arising after the date from which it had decided he was no longer the liable person. The council should not have proceeded with the court action. The council agreed to settle the complaint by apologising to Mr J for its errors and paying him £350 compensation.

### ***Council tax recovery action against vulnerable woman with no income***

*Slough Borough Council (08 009 315) 4 April 2009*

Slough Borough Council's council tax department failed to suspend bailiff action against a woman after being advised she was totally dependent on its own social services and had no means to pay. 'Mrs Carter' (pseudonym) had entered the UK as a student in 2002 but was prevented from studying after developing cancer and was prohibited from working or claiming benefits. She was totally reliant on the council's social services department, who provided accommodation and a subsistence allowance, and she had no income or belongings other than those they provided. She built up council tax arrears. In spite of being informed of these facts by Mrs Carter's social worker, the council instructed bailiffs to collect the council tax arrears, even though it had evidence that she was vulnerable, had no income, and was being supported by a different council department.

**Outcome:** the Ombudsman found the council at fault in failing to consider the information provided by the social worker and for failing to pass Mrs Carter's case to its welfare team. If the department had acted on the information provided, it is unlikely that bailiffs would have been involved and distress caused would have been avoided. The council was also criticised for the lack of effective liaison between different departments and for failing to have a written policy on dealing with vulnerable people.

The Ombudsman recommended that the council should write off Mrs Carter's council tax arrears; pay her £250; implement a written policy on dealing with vulnerable people, and a policy on how to deal with people who are reliant on support from social services; and establish a formal link between the council tax welfare team and social services.

#### ***Failure to administer council tax benefit and housing benefit and wrongful enforcement***

*Wandsworth Borough Council (09 008 990) 16 March 2010*

The complainant Mr L had experienced repeated failures in the administration and payment of housing benefit and council tax over a seven-year period. Shortfalls in housing benefit resulted in rent arrears and eviction proceedings being commenced, and failures to pay council tax benefit resulted in three liability orders. Mr L attempted to settle the liability orders, whereupon bailiffs employed by Wandsworth Council imposed three sets of costs in respect of one levy. On receiving another summons, Mr L approached the authority before the hearing and was told that he would have to pay an additional £20 for seeking to make a repayment arrangement.

Mr L lodged a formal complaint which went through the three stages of the council's complaints procedure; he also complained separately to the bailiffs. The latter complaint resulted in bailiffs refunding the excessive charges, but the responses given by the council at each level to the wider issues of maladministration were inadequate and did not constitute a remedy.

**Outcome:** the council offered a settlement of £630. Excessive bailiff fees of £50 were also repaid separately.

#### ***Delay in reaching decision on backdating CTR***

*South Ribble Borough Council (17 002 063) 31 January 2017*

Mr X, who was getting universal credit, applied for backdated CTR. The council failed to comply with the 14-day time frame to deal with CTR applications set out in its scheme. It took an extra 10 weeks to give Mr X its decision on his backdated claim. The council also applied for an attachment of earnings order despite an agreement to pay £30 a month in respect of payments being in place when he obtained paid employment.

**Outcome:** the Ombudsman found fault causing an injustice to Mr X that needed redressing. It recommended the council apologise to Mr X and pay £100 for the stress and delay in determining the claim and a further £100 for seeking a second attachment of earnings order.

#### ***Failure to properly determine self-employed earnings for CTR purposes***

*Birmingham City Council (19 006 474) 1 April 2020*

Mr X complained that the council had failed to work out his self-employed earnings and administer his claim for CTR over 2018/19. It then did not deal with his claim properly in 2019, causing delay, time and trouble, and financial hardship. The council stated it would write off an overpayment of £609, then changed its mind. The council eventually assessed Mr X's claim in July 2018, advising him that he was now in credit and it refunded £200. In October 2019, the council agreed to pay a discretionary council tax hardship payment to reduce Mr X's council tax for 2019/20 due to his financial circumstances. This significantly reduced his payments.

**Outcome:** the Ombudsman ruled the council failed to handle Mr X's claim correctly. Mr X had been required to complete forms which were not necessary and the council failed to accept evidence, making several requests for information when only one was necessary, with an avoidable delay of 10–12 weeks. Further errors occurred at a review in April 2019.

The council's delays and errors caused Mr X distress and an apology and a £200 payment was recommended. However, the write-off was not now deemed necessary as this would have meant double recovery as the council would in effect be paying Mr X twice.

### ***Ombudsman not satisfied by council's response after further report***

*Torbay Council (10 002 564) 12 May 2011*

Torbay Council commenced bankruptcy proceedings against a man with mental health problems (given the pseudonym of 'Mr Castle') who owed a council tax debt of £2,248. He complained to the Ombudsman that the council had failed to have regard to his mental health issues.

The Ombudsman established the council had difficulties engaging with the complainant. It was known that he did not open his post but left it to accumulate over a long period. None of the council's own officers visited Mr Castle at home. The council ignored the findings of a bailiff which indicated illness on the part of Mr Castle. The bailiff advised the council's solicitor that Mr Castle was suicidal.

While recognising that the council was short of enforcement options and that there was a duty to collect council tax, the Ombudsman found maladministration in its failures to keep proper records and the decision to commence bankruptcy proceedings.

**Outcome:** maladministration was found. The council had not followed proper processes or kept accurate records. The council had not reviewed its decision to commence bankruptcy proceedings when information came to light that Mr Castle might be considered suicidal. The Ombudsman considered that, had such failings not occurred, then the council would not have continued bankruptcy proceedings and Mr Castle would not have incurred the costs of some £24,000. The Ombudsman recommended that the council pay Mr Castle £25,000 and issue a formal apology.

**Note:** the bailiff appears to have acted in compliance with principles laid down in national standards. This requires an enforcement agent who discovers a vulnerable household to report it to the creditor for reconsideration. In this case the bailiff did, but the authority failed to act properly on receipt of the information.

### ***Wrongful pursuit of arrears and mishandling complaint***

*London Borough of Newham (13 014 323) 24 April 2014*

Ms X complained to the council that it had wrongfully pursued her for arrears she did not owe. The council issued three summonses for non-payment and the magistrates' court made liability orders. This resulted in costs being added to her council tax account. The council did not properly investigate her complaints.

Investigation by the Ombudsman showed that Ms X had paid council tax due under an instalment plan and the authority could not explain why summonses were issued and that it had compounded its errors by its poor handling of Ms X's complaint.

**Outcome:** the council agreed to apologise, write off remaining arrears, withdraw all summonses, refund amounts wrongly transferred between accounts and pay Ms X £200 in respect of the time and trouble taken in complaining.

#### ***Excessive and unjustified bailiff fees***

*Blaby District Council (11007684) 18 July 2012*

Mrs S owed arrears of council tax. She complained that bailiffs employed by the council to collect her council tax arrears had not acted within the law and had overcharged her. She also complained that the council failed to properly respond to queries and complaints about these issues, including a serious allegation that four bailiffs tried to break into Mrs S's property and obtained money from her partner by clamping and taking occupation of a car that was not his.

**Outcome:** the Ombudsman found that the council failed to exercise proper control over the actions of its bailiffs and the fees it charged. The bailiffs had charged eight visit fees (because Mrs S had arrears for eight years – ie, there were eight accounts) on two occasions for one visit by one bailiff, and failed to carry out DVLA checks on the ownership of the vehicles. The council also failed to properly investigate Mrs S's complaints until she complained to the Ombudsman. Once the Ombudsman became involved, the council reduced the fees charged by £630.50; carried out DVLA checks on the vehicles, which showed they did not belong either to Mrs S or her partner, so removed the remaining levies and associated fees; and set out a new contract under which bailiffs could only charge one fee per levy. The council agreed to pay £300 to Mrs S for the distress and inconvenience she was caused, which it offset against the outstanding council tax arrears. The Ombudsman also urged Mrs S to enter into a reliable regular payment arrangement with the council to avoid future action, such as an attachment of earnings.

#### ***Charging of fees not permitted by law***

*Thurrock Council (09 006 694) 3 February 2010*

Thurrock Council served a statutory demand for arrears of £1,367.57 and a further £400 for administrative costs for settling the debt. The complainant disputed the £400 fee. After a complaint failed to resolve the issue, an investigation took place by the Ombudsman who ruled that the council had no power to charge a £400 fee since neither the Insolvency Rules, nor any other legislation, permitted recovery of fees for a statutory demand or an arrangement unless a bankruptcy order was made.

**Outcome:** the Ombudsman found there had been maladministration. The council accepted it was not entitled to charge the fee and it ceased to do so in similar cases. It refunded the £400 to the complainant, restored the right to pay in instalments, waived an additional £42.50 in bailiff fees incurred and made a £40 goodwill payment in compensation.

#### ***Wrongly imposed fees on enforcement for a liability***

*Aylesbury Vale District Council (17 008 183) 8 May 2018*

The council imposed fees on the taxpayer on a outstanding council tax liability in respect of one financial year. The Ombudsman identified the council had increased the amounts owed by the addition of extra fees on enforcement. It subsequently removed an enforcement agent compliance fee but added a further £480 the following year, including a £110 summons fee, £60 liability order charge, £75 compliance fee and £235 enforcement visit charge by enforcement ages. The council did not properly consider Ms B's request for a reduction in the level of deductions from an attachment of earnings order,



failed in its communication with her and did not send her a copy of an attachment of earnings notice. In view of fault with the later imposition of an attachment of earnings, the council should refund the charges associated with enforcement.

**Outcome:** the Ombudsman directed the council to apologise and pay Ms B £410.

### ***Failure to advise disabled taxpayer correctly and properly consider discretionary and disabled reductions***

*Medway Borough Council (14 000 985) 5 March 2015*

The council failed to deal correctly with an application by Mr J for a discretionary council tax reduction, imposed an additional requirement on an application for a disabled band reduction and failed to answer correspondence in an accurate and timely manner, including informing the taxpayer of his right to appeal to the Valuation Tribunal for England.

**Outcome:** the council paid compensation of £420 for its failure in handling the discretionary reduction application correctly. Following investigation, the council agreed to revise and correct its disabled band reduction form, and the Ombudsman recommended the council apologise and review Mr J's application and pay him a further £75 for giving the incorrect information on its form and for its delays.

### ***Refusal to accept complaints about debt collectors***

*Plymouth City Council (18 013 949) April 2019*

Miss X complained that the bailiffs turned down a reasonable offer of repayment without giving a reason. She also complained that the same bailiffs broke regulations by charging multiple enforcement fees after a liability order had been imposed.

**Outcome:** the Ombudsman found the council at fault for refusing to accept complaints about its debt collectors. The council was responsible as the bailiffs were acting on its behalf.

## **3. Complaints to the local auditor**

You can make a complaint about the local authority to the local auditor or request an investigation into the local authority's financial conduct. Local authorities are required to ensure that public money is properly accounted for and that financial activities conducted in accordance with the law and proper standards, and that public money such as council tax is safeguarded and properly accounted for, and used economically, efficiently and effectively. County councils, district councils, borough councils and parish councils are all bound by these obligations and, in discharging their responsibilities, local authorities must have proper arrangements in place for the governance of their financial affairs and the stewardship of the resources at their disposal. They are also required to report on their arrangements

in their annual published governance statements and accounts. Where there are concerns, the matter may be reported to the auditor. Examples involving council tax might include the excessive imposition of costs for liability orders not justified by law, the treatment and accounting of monies received or recovered, any refusal to accept money offered in settlement of a council tax debt which results in extra costs to the taxpayer, the imposition of unjustifiable charges or other accounting irregularities with the collection of local taxes.

The auditor has a range of powers including:

- issuing a public interest report on any matter that it is considered should be brought to public attention;<sup>30</sup>
- issuing an advisory notice;
- applying to the court for a declaration that an item of account is unlawful or if there is reason to believe that unlawful expenditure has been or is about to be incurred by an audited body.<sup>31</sup>

Where the auditor conducts an investigation, the cost is covered by the local authority. Although the auditor is paid by the local authority, the investigation is required to be wholly independent. Following the case of *Nicolson v Tottenham Magistrates' Court* (see p214), referrals to the auditor may be made concerning the costs being charged for seeking liability orders.

In England, the law on the auditing of local authorities is governed by the Local Audit and Accountability Act 2014 and by a Code of Practice issued by the National Audit Office (available at [nao.org.uk](http://nao.org.uk)).

A local auditor may refer to the Secretary of State any matter arising from an audit under this Act if it appears it relates to decisions of the Secretary of State for social security – eg, recovery of overpayments of benefits from previous years.<sup>32</sup>

The Secretary of State may also appoint an inspector to carry out inspections in respect of a local authority's compliance with best value practices.<sup>33</sup>

In Wales, responsibility for auditing lies with the Wales Audit Office. Its code is available at [audit.wales/publication/code-of-audit-practice](http://audit.wales/publication/code-of-audit-practice).

In Scotland, responsibility for auditing local authority finance lies with Audit Scotland, which provides the Auditor General and the Accounts Commission with services for checking financial conduct on the part of local government.<sup>34</sup>

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## **4. Action through the courts**

The role of the Ombudsman is generally to supplement the jurisdiction and not to act as a substitute for the courts.<sup>35</sup> The use of the civil courts is the ultimate recourse of the citizen who is a victim of bureaucratic wrong-doing.<sup>36</sup> The council tax enforcement regulations give a specific right to recover sums overpaid, but more generally a local authority will fall within the general jurisdiction of the civil courts, including the arbitration procedure or 'small claims court'. Each

billing authority is liable for acts and defaults by its employees or servants in civil law, as with disputes between private parties. Local authorities may be sued for negligence, breach of statutory duty (eg, in refusing to process a council tax reduction application) or harassment in cases of wrongful debt recovery or for misfeasance in a public office.<sup>37</sup> For a claim of misfeasance in a public office to be sustainable, a claimant must allege that conduct by a public servant was motivated by malice or ill-will or knowing illegality.<sup>38</sup> In addition to public authorities being liable in civil law, individual officials can be proceeded against on a personal basis where an individual officer has acted unlawfully, in bad faith or abused a position of trust.<sup>39</sup> Specific claims in tort may lie such as instigating malicious civil process or malicious instigation of bankruptcy proceedings or misfeasance in a public office. Misfeasance in a public office is recognised in Scotland, supported by English law authorities.<sup>40</sup>

Damages may be sought under a wide range of headings in respect of personal injuries of the individual. In respect of wrongful committal to prison, loss of liberty and distress, humiliation, fear and upset, if a public authority is involved aggravated and exemplary damages, and exemplary damages may be a head of claim. Most officers at senior level in billing authorities will be aware of this. The authority is liable in costs for the acts and defaults of its servants, as are individual officers if sued personally, or possibly even on a third-party costs basis in exceptional circumstances.<sup>41</sup> Legal advice should be sought before commencing such civil claims.

In particular, the small claims jurisdiction of the County Court may be used for acts and omissions by local authority departments, as it is relatively cheap to use and people on low incomes or benefits may be entitled to obtain a fee waiver.<sup>42</sup> The local authority faces the further problem that neither side in a claim for under £10,000 can claim for legal costs and, if the council does nothing in response to the issue of proceedings, a default judgment may be entered against the authority and any officer of the council named as a defendant.

In a small number of cases, maladministration may also involve the deliberate commission of corrupt or criminal actions or defaults. Liability may also attach to individuals and outsourced companies and agents employed by a local authority, although in some cases liability may be limited by statute. For example, actions against trustees in bankruptcy may be limited to cases where a trustee of a bankrupt's estate has misapplied or retained money or property or where a bankrupt taxpayer's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty.<sup>43</sup>

Victims of maladministration have taken the matters to the police where maladministration has gone beyond negligence, into the realm of criminal liability for individual officers. There is a range of potential criminal offences that can arise from the production of false documents, including the Forgery and Counterfeiting Act 1981, various offences involving theft or fraud, offences under the Criminal Attempts Act 1981 and the common law offence, misconduct in a public office.

The police are under a duty to investigate when a matter is reported to them, though officers may suggest that the matter be pursued as a civil matter. A private prosecution can also be commenced if the police fail to act.<sup>44</sup>

## Judicial review in the High Court or Court of Session

Judicial review is a legal challenge to a public body. Judicial review proceedings may be available to challenge decisions, actions or failures of the local authority in the High Court in England and Wales or the Court of Session in Scotland. Judicial review may be available when no other option is available and should only be used as a last resort.

Legal advice should be sought as this type of action can be costly, and the financial factor must be considered. See [cpag.org.uk/welfare-rights/judicial-review](http://cpag.org.uk/welfare-rights/judicial-review) for a useful guide to the judicial review process.

Judicial review is a three-stage process which requires action with three months of the wrongful decision or such longer period as the Court considers equitable.

In England and Wales, judicial review procedure is governed by Part 54 of the Civil Procedure Rules. Details can be found in the *Supreme Court Practice*, known as 'The White Book'. In Scotland, the procedure is governed by Chapter 58 of the Rules of Court.

In England and Wales, the first step (the pre-action protocol) involves serving a 'letter before claim' on the authority, warning it of your intention to seek judicial review and providing 14 days for it to respond (the 14 day-period must not overrun the three-month time limit for an application to the High Court). There are no costs and no risk of having to pay the other side's costs during the pre-action stage. Failure to comply with the pre-action protocol can result in sanctions against the local authority if the matter reaches the High Court, the costs of which are potentially high. If the local authority's response is unsatisfactory, an application for leave for judicial review may be commenced in the Administrative Court, part of the High Court. If your issue is not resolved at the pre-action stage, there is no requirement to pursue the matter to the next stage (ie, actual litigation) if you do not want to go to court. The pre-action protocol does not apply in Scotland, but it is good practice to try to avoid litigation and sending a letter before claim can provide a way of doing so.

### Letter before claim

Use the following structure when drafting your letter before claim to ensure you include all the information required by the pre-action protocol.

#### Background facts

What are your circumstances? Give relevant details of your family, your health and housing.

What has happened? Include relevant dates.

What action has already been taken to try to resolve the dispute?



What has been the effect on you of the decision or action being challenged?

#### **Legal background**

What does the legislation say should have happened?

What does any caselaw say should have happened?

What does any guidance say should have happened?

How is this different to what, in fact, has happened – ie, to the decision/action you are challenging?

#### **Grounds for judicial review**

What are your reasons for requesting judicial review? These are your 'grounds for judicial review'.

#### **Alternative remedies**

If there is an alternative remedy, explain how you have exhausted it, or use this section to justify why you are not using it.

#### **Details of the action you expect the local authority to take**

Explain what you are asking for. This will depend on what your grounds for judicial review are. If you have challenged the local authority's failure to do something, your request will be for it to do that thing and might also include a request to improve future decision making.

.....

In England and Wales, the court can make an order cancelling the wrongful decision (a 'quashing order') or requiring the authority to do or cease doing something unlawful (known as a 'mandatory order' or 'prohibitory order'). In Scotland, a decision can be quashed by 'reduction' and a 'declarator' (known as a 'declaration' in England and Wales) can be established to ascertain the legal position.

In England and Wales, you must seek leave (ie, permission) for judicial review. The papers are put before a High Court judge who considers the merits of the case. If an arguable case is revealed, the judge may grant leave for judicial review and give directions to you, the local authority and the magistrates' court if enforcement by a liability order or committal to prison has been commenced. If the matter is not settled after the leave stage, the application may proceed to a full judicial review hearing in the High Court. This takes the form of legal argument before a judge, or judges, of the Administrative Court reviewing the decision. On considering the law, the Administrative Court decides whether a remedy should be awarded and also whether a costs order may be made against the loser in the appeal. Costs are at the discretion of the court. Any party which takes part in an appeal may be subject to a costs order if the case is contested. However, in some cases where a local authority or public body has acted badly, costs may be refused.<sup>45</sup> In exceptional cases, costs may be made against magistrates, clerks and tribunals where a decision is deemed to have been made in bad faith.<sup>46</sup>

In Scotland, the procedure is similar, except there is no pre-action protocol. Court action for judicial review starts using a document known as a 'petition'.

You must obtain 'leave' (permission) from the Court of Session to bring a judicial review action. The court may grant permission where there is 'sufficient interest' in the subject matter and the application has a real prospect of success.

If permission is refused by the court, you have a right to an oral hearing before a different judge, as well as a further right of appeal to the Inner House of the Court of Session.<sup>47</sup>

## Notes

### 1. Complaining to the local authority

- 1 ss50 and 76A Freedom of Information Act 2000

### 2. Complaints to the Ombudsman

- 2 **E**s23 LGA 1974  
**W** PSO(W)A 2019  
**S** SPSA 2002
- 3 ss24A(6) and 34B(8) LGA 1974
- 4 House of Commons debates; Parliamentary Commissioner Act 1967
- 5 *R v Commissioner for Local Administration, ex parte Eastleigh BC* [1988] 3 All ER 151, per Lord Donaldson MR
- 6 ss2-5 SPSA 2002; see *Terri McCue as guardian of Andrew McCue Petitioner and Reclaimers for Judicial Review Against A Decision of Glasgow City Council* [2020] CSH 51
- 7 **E**s29(2) LGA 1974  
**W** s19(3) PSO(W)A 2019  
**S** s13(4) SPSA 2002
- 8 Ombudsman Report 14 001 797, Adur DC, 11 February 2015, para 37
- 9 Ombudsman Report 19 0008 828, LB Haringey, 15 January 2020
- 10 The Local Government and Social Care Ombudsman, *Council Tax Reduction: Guidance for practitioners*, August 2019
- 11 Report by Commissioner Jerry White, Complaint 03/B/12862, 29 September 2004
- 12 CPR rule 328 and Practice Direction 32
- 13 Complaint and decision 17 011 640, LB Merton, 4 May 2018
- 14 Ombudsman Report 19 010 618, LB Bexley, 11 March 2020
- 15 Ombudsman Report 13 016 986, Birmingham City Council, 3 June 2014
- 16 Ombudsman Report 13 011 879, Rochdale MBC, 21 August 2014
- 17 **E**s26 LGA 1974  
**W** s13 PSO(W)A 2019  
**S** s7(8) SPSA 2002
- 18 Ombudsman Report 13 007 295, Medway Council, 18 December 2014
- 19 See Ombudsman Report 19 013 049, LB Barnet, 17 September 2020
- 20 Welsh Ombudsman finance and taxation Case Number 201607021, Powys CC April 2017
- 21 Ombudsman Report 15 006 127, Birmingham City Council, 6 June 2016
- 22 s26(6) LGA 1974
- 23 **EW** s26(6)(a) Local Government Act 1997  
**S** s7(8) SPSA 2002
- 24 Ombudsman Report 14 020 112, Tunbridge Wells BC, 8 March 2016
- 25 s6 PSO(W)A 2019
- 26 ss30(1B) and 34H(i) LGA 1974, as amended
- 27 s92 Local Government Act 2000
- 28 Ombudsman Report 03/C/07422, Allerdale DC, 12 January 2005
- 29 Ombudsman Report 16 012 473, LB Enfield, 27 September 2017

### 3. Complaints to the local auditor

- 30 Sch 7 Local Audit and Accountability Act 2014
- 31 ss28 and 29 Local Audit and Accountability Act 2014
- 32 s39 Local Audit and Accountability Act 2014

- 33 ss10-11 Local Government Act 1999
- 34 [audit-scotland.gov.uk](http://audit-scotland.gov.uk)

#### **4. Action through the courts**

- 35 Auburn, Moffatt and Sharland on Judicial Review: Principles and Procedure (2013), para 26.110
- 36 *Ferguson v British Gas Trading Ltd* [2009] EWCA Civ 46
- 37 *Three Rivers DC v Bank of England (No.3)* [2003] AC 1, [2000] 3 All ER 1
- 38 *Coghlan v Chief Constable of Greater Manchester Police* [2018] EWHC 1784 (QB)
- 39 *Three Rivers DC v Bank of England (No.3)* [2003] 2 AC 1
- 40 *Robert Francis Phipps (AP) Pursuer v the Royal College of Surgeons of Edinburgh Defenders* [2010] CSOH 58
- 41 See s51 Senior Courts Act 1981; *Dymocks Franchise Systems (NSW) Pty Ltd v Todd and others* [2004] UKPC 39; *R v LB Lambeth, ex parte Wilson* [1997] 3 FCR 437; *Flatman v Germany*; *Weddall v Barchester Healthcare Ltd* [2011] EWHC 2945 (QB)
- 42 Form Ex1 60, available at [gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees](http://gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees)
- 43 s304 Insolvency Act 1986; *Oraki and another v Bramston and another* [2016] 2 All ER 1065
- 44 *R v Stewart* [1896] 1 QB 300
- 45 *Wiltshire Council v Piggin* [2014] EWHC 4386 (Admin)
- 46 *R v Newcastle Under Lyme Magistrates' Court ex parte Massey* [1995] 1 All ER 125; *R (on the application of Desouza) v Croydon Magistrates' Court* [2012] EWHC 1362 (Admin); see also s 108 Courts Act 2003; Justices of the Peace and Authorised Court and Tribunal Staff (Costs) Regulations 2020 SI 398
- 47 ss27B-27D Court of Session Act 1988

# Appendix 1

## Useful addresses

### **Valuation Office Agency**

voa.gov.uk

#### **England**

Tel: 03000 501 501

#### **Wales**

Tel 03000 505 505

### **Scottish Assessors Association**

Hillside House

Laurelhill

Stirling FK7 9JQ

Tel: 01786 892200

Email:

assessor@centralscotland-vjb.gov.uk

saa.gov.uk

### **Valuation Tribunal for England**

valuationtribunal.gov.uk

Tel: 0303 445 8100

Email:

appeals@valuationtribunal.gov.uk

#### **Head office (and London office)**

2nd Floor, 120 Leman Street

London E1 8EU

Email (head office):

ceo.office@valuationtribunal.gov.uk

#### **Doncaster office (and council tax reduction team)**

3rd Floor, Crossgate House

Wood Street

Doncaster DN1 3LL

Email:

appeals@valuationtribunal.gov.uk

### **Valuation Tribunal for Wales**

22 Gold Tops

Newport NP20 4PG

Tel: 01633 255 003

Email: correspondence@

valuationtribunal.wales

valuationtribunal.wales

### **Council Tax Reduction Review Panel (Scotland only)**

Glasgow Tribunals Centre

20 York Street

Glasgow G2 8GT

Tel: 0141 302 5840

Email: ctrpadmin@

scotcourtstribunals.gov.uk

counciltaxreductionreview.

scotland.gov.uk

### **Local Government and Social Care Ombudsman**

#### **England**

PO Box 4771

Coventry CV4 0EH

Tel: 0300 061 0614

lgo.org.uk



**Public Services Ombudsman for Wales**

1 Ffordd yr Hen Gae  
Pencoed CF35 5LJ  
Tel: 0300 790 0203  
Email: ask@ombudsman.wales  
ombudsman.wales

**Scottish Public Services Ombudsman**

Freepost SPSO (this is all you need to  
write on the envelope)  
Tel: 0800 377 7330  
spso.org.uk

**Parliamentary and Health  
Service Ombudsman**

Millbank Tower  
30 Millbank  
London SW1P 4QP  
Tel: 0345 015 4033  
You can text 'call back' (with your  
name and mobile number) to 07624  
813 005  
ombudsman.org.uk

**The Adjudicator**

The Adjudicator's Office  
PO Box 10280  
Nottingham NG2 9PF  
Tel: 0300 057 1111  
adjudicatorsoffice.gov.uk

## Appendix 2

# National Standards for Enforcement Agents

### Taking Control of Goods: National Standards

Issued 6 April 2014 by the Ministry of Justice

#### Vulnerable situations

70. Enforcement agents/agencies and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures agreed between the agent/agency and creditor about how such situations should be dealt with. The appropriate use of discretion is essential in every case and no amount of guidance could cover every situation. Therefore the agent has a duty to contact the creditor and report the circumstances in situations where there is evidence of a potential cause for concern.

71. If necessary, the enforcement agent will advise the creditor if further action is appropriate. The exercise of appropriate discretion is needed, not only to protect the debtor, but also the enforcement agent who should avoid taking action which could lead to accusations of inappropriate behaviour.

72. Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 16 or is deemed to be vulnerable by the enforcement agent; they can ask when the debtor will be home – if appropriate.

73. Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.

74. A debtor may be considered vulnerable if, for reasons of age, health or disability they are unable to safeguard their personal welfare or the personal welfare of other members of the household.

75. The enforcement agent must be sure that the debtor or the person to whom they are entering into a controlled goods agreement understands the agreement and the consequences if the agreement is not complied with.

76. Enforcement agents should be aware that vulnerability may not be immediately obvious.

77. Some groups who might be vulnerable are listed below. However, this list is not exhaustive. Care should be taken to assess each situation on a case by case basis.

- the elderly;
- people with a disability;
- the seriously ill;
- the recently bereaved;
- single parent families;
- pregnant women;
- unemployed people; and,
- those who have obvious difficulty in understanding, speaking or reading English.

78. Wherever possible, enforcement agents should have arrangements in place for rapidly accessing interpretation services (including British Sign Language), when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.

## Appendix 3

# Adjournment letter

TO: The Magistrates' Chief Executive  
The [NAME] Magistrates' Court  
[ADDRESS OF MAGISTRATES' COURT]

Dear Sir/Madam

RE: Summons number [INSERT REFERENCE NUMBER]  
RE: Liability order application – Hearing date [STATE DATE]  
RE: [NAME OF COUNCIL] v [NAME OF TAXPAYER]

I hereby apply to the court sitting at [GIVE NAME OF MAGISTRATES' COURT] for an adjournment of the above proceedings for the recovery of council tax to be heard on [STATE DATE CONTAINED ON SUMMONS].

The basis for seeking the adjournment is:  
[GIVE DETAILS OF WHY ADJOURNMENT IS REQUESTED]  
[IN A CASE WHERE AN APPEAL IS MADE TO A VALUATION TRIBUNAL ABOUT LIABILITY, EXEMPTION OR AN AMOUNT OF TAX, GIVE DETAILS OF THE APPEAL]

Accordingly, I have made an appeal to the valuation tribunal under section 16 of the Local Government Finance Act 1992 against this decision, and I would ask that the magistrates' court please consider adjourning this case until the tribunal has determined this matter.

Naturally, I hope that it will be possible to settle this matter without unnecessary proceedings and I await hearing from you with your decision.

Thank you for your attention.

Yours faithfully  
[NAME]

**Note:** a copy of the request should also be served on the local authority.



# Appendix 4

## Abbreviations used in the notes

AAC	Administrative Appeals	para(s)	paragraph(s)
All ER	All England Reports	QB	Queen's Bench Reports
Art(s)	article(s)	QBD	Queen's Bench Division
CA	Court of Appeal	r(r)	rule(s)
Ch	Chancery Division	RA	Rating Appeals
CO	Crown Office	Reg(s)	Regulation(s)
COD	Crown Office Digest	RVR	Rating and Valuation Reports
CS	Court of Session	S	Scotland
CSIH	Scotland Court of Session, Inner House	s(s)	section(s)
E	England	Sch(s)	Schedule(s)
EWCA	England and Wales Court of Appeal	UKUT	UK Upper Tribunal (Administrative Appeals Chamber)
EWHC	England and Wales High Court	VOA	Valuation Office Agency
HC	High Court	VTE	Valuation Tribunal for England
HLR	Housing Law Reports	CPS	England Consolidated Practice Statement 2020, effective from 1 April 2020
JP	Justice of the Peace Reports	2020	
KB	King's Bench Reports	W	Wales
LC	Lands Chamber	WLR	Weekly Law Reports
LJ	Lord Justice		

### Acts of Parliament

CSPSSA 2000	Child Support, Pensions and Social Security Act 2000
LA 2011	Localism Act 2011
LGA 1974	Local Government Act 1974
LGA 1992	Local Government Act 1992
LGA 2003	Local Government Act 2003
LGFA 1988	Local Government Finance Act 1988
LGFA 1992	Local Government Finance Act 1992
LGFA 2012	Local Government Finance Act 2012
PSO(W)A 2019	Public Services Ombudsman (Wales) Act 2019
SPSA 2002	Scottish Public Services Act 2002
SSAA 1992	Social Security Administration Act 1992
TCEA 2007	Tribunals, Courts and Enforcement Act 2007

### Regulations and other statutory instruments

Each set of regulations has a statutory instrument (SI) number and date. You ask for them by giving their date and number.

CCCTNR(E)(MC) Regs	The Community Charges, Council Tax and Non-Domestic Rating (Enforcement) (Magistrates' Courts) England Regulations 2000 No.2026
CT(AE) Regs	The Council Tax (Administration and Enforcement) Regulations 1992 No.613
CT(AE)(A)(E) Regs	The Council Tax (Administration and Enforcement) (Amendment) (England) Regulations 2004 No.297
CT(AE)(A)(No.2)(E) Regs	The Council Tax (Administration and Enforcement) (Amendment) (No.2) (England) Regulations 2012 No.3086
CT(AE)(A)(W) Regs	The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2007 No.582
CT(AE)(AEO)(W) Regs	The Council Tax (Administration and Enforcement) (Attachment of Earnings Orders) (Wales) Regulations 1992 No.1741
CT(AE)(S) Regs	The Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 No.1332
CT(ALA) Regs	The Council Tax (Alteration of Lists and Appeals) Regulations 1993 No.290
CT(ALA)(A)(W) Regs	The Council Tax (Alteration of Lists and Appeals) (Amendment) Wales Regulations 2010 No.77 (W.10)
CT(ALA)(E) Regs	The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 No.2270
CT(ALA)(E)(A) Regs	The Council Tax (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2013 No.467
CT(ALA)(S) Regs	The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 No.355
CT(APDD) Regs	The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 No.552
CT(APDD) Amdt Regs	The Council Tax (Additional Provisions for Discount Disregards) Amendment Regulations 1996 No.637
CT(CD)O	The Council Tax (Chargeable Dwellings) Order 1992 No.549
CT(CVL) Regs	The Council Tax (Contents of Valuation Lists) Regulations 1992 No.553
CT(D)(S)(A) Regs 1993	The Council Tax (Discounts) (Scotland) Amendment Regulations 1993 No.342
CT(D)(S)(A) Regs 1995	The Council Tax (Discounts) (Scotland) Amendment Regulations 1995 No.597
CT(D)(S)(A)O	The Council Tax (Discounts) (Scotland) (Amendment) Order 1993 No.343

CT(D)(S)CAO	The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 No.176
CT(D)(S)O	The Council Tax (Discounts) (Scotland) Order 1992 No.1408
CT(D)(S) Regs	The Council Tax (Discounts) (Scotland) Regulations 1992 No.1409
CT(DD)O	The Council Tax (Discount Disregards) Order 1992 No.548
CT(DD)(A)(E)O	The Council Tax (Discount Disregards) (Amendment) (England) Order 2006 No.3396
CT(DD)(A)(W)O	The Council Tax (Discount Disregards) (Amendment) (Wales) Order 2006 No.580
CT(DDED)(A)O	The Council Tax (Discount Disregards and Exempt Dwellings) (Amendment) Order 1995 No.619
CT(DIS) Regs	The Council Tax (Deductions from Income Support) Regulations 1993 No.494
CT(DN)(E) Regs	The Council Tax (Demand Notices) (England) Regulations 2010 No.2990
CT(DN)(E) Regs 2011	The Council Tax (Demand Notices) (England) Regulations 2011 No.3038
CT(DN)(E)(A) Regs	The Council Tax (Demand Notices) (England) (Amendment) Regulations 2012 No.3087
CT(DN)(W) Regs	The Council Tax (Demand Notices) (Wales) Regulations 1993 No.255
CT(DN)(W)(A) Regs	The Council Tax (Demand Notices) (Wales) (Amendment) Regulations 2013 No.63
CT(DPRS)(S) Regs	The Council Tax (Dwellings Part Residential Subjects) (Scotland) Regulations 1992 No.2955
CT(DUD)(S) Regs	The Council Tax (Discounts for Unoccupied Dwellings) (Scotland) Regulations 2005 No.51
CT(Dw)(E) Regs	The Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 No.3011
CT(Dw)(S) Regs	The Council Tax (Dwellings) (Scotland) Regulations 1992 No.1334
CT(Dw)(S) Regs 2010	The Council Tax (Dwellings) (Scotland) Regulations 2010 No.35
CT(ED)O	The Council Tax (Exempt Dwellings) Order 1992 No.558
CT(ED)(A)(E)O	The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2006 No.2318
CT(ED)(A)(E)O 2005	The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2005 No.2865
CT(ED)(A)(W)O	The Council Tax (Exempt Dwellings) (Amendment) (Wales) Order 2000 No.1025
CT(ED)(E)(A)O 2012	The Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 No.2965

## Appendix 4: Abbreviations used in the notes

CT(ED)(S)O 1992	The Council Tax (Exempt Dwellings) (Scotland) Order 1992 No.1333
CT(ED)(S)O 1995	The Council Tax (Exempt Dwellings) (Scotland) (Amendment) Order 1995 No.598
CT(ED)(S)O 1997	The Council Tax (Exempt Dwellings) (Scotland) Order 1997 No.728
CT(ED)(S)O 2002	The Council Tax (Exempt Dwellings) (Scotland) Order 2002 No.101
CT(ED)(S)(A)O	The Council Tax (Exempt Dwellings) (Scotland) (Amendment) Order 2006 No.402
CT(ED)(S)(A)O 1995	The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 1995 No.598
CT(ED)(S)(A)O 2012	The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 No.339
CT(EDDD)(A)O	The Council Tax (Exempt Dwellings and Discount Disregards) (Amendment) Order 1998 No.291
CT(LO) Regs	The Council Tax (Liability of Owners) Regulations 1992 No.551
CT(LO)(A)(E) Regs	The Council Tax (Liability of Owners) (Amendment) (England) Regulations 2003 No.3125
CT(LO)(A)(W) Regs	The Council Tax (Liability of Owners) (Amendment) (Wales) Regulations 2004 No.2920
CT(LO)(S) Regs	The Council Tax (Liability of Owners) (Scotland) Regulations 1992 No.1331
CT(PCD)(E) Regs	The Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 No.3011
CT(PCD)(W) Regs	The Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1992 No.3023
CT(RD) Regs	The Council Tax (Reductions for Disabilities) Regulations 1992 No.554
CT(RD)(S) Regs	The Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992 No.1335
CT(RDTA)(W)(A) Regs	The Council Tax (Reductions for Disabilities and Transitional Arrangements) (Wales) (Amendment) Regulations 2005 No.702
CT(SVD) Regs	The Council Tax (Situation and Valuation of Dwellings) Regulations 1992 No.550
CT(SVD)(W)(A) Regs	The Council Tax (Situation and Valuation of Dwellings) (Wales) (Amendment) Regulations 2005 No.701
CT(TA)(W) Regs	The Council Tax (Transitional Arrangements) (Wales) Regulations 2004 No.3142
CT(VALA)(E) Regs	The Council Tax (Valuations and Alterations of Lists and Appeals) (England) Regulations 2008 No.315
CT(VD)(S) Regs	The Council Tax (Valuation of Dwellings) (Scotland) Regulations 1992 No.1329



CT(VD)(S)(A) Regs	The Council Tax (Valuation of Dwellings) (Scotland) (Amendment) Regulations 1993 No.354
CT(VUD)(S) Regs	The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Amendment Regulations 2016 No.369
CTNDR(DN)(E) Regs	The Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 No.2613
CTR(S) Regs	The Council Tax Reduction (Scotland) Regulations 2012 No.303
CTR(S)A(No.2) Regs	The Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2013 No.218
CTR(SPC)(S) Regs	The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 No.319
CTRS(DFE)(E) Regs	The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 No.501
CTRS(DFE)(W) Regs	The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 No.588
CTRS(DS)(E) Regs	The Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 No.2886
CTRS(DS)(W) Regs	The Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 No.3145
CTRS(PR)(E) Regs	The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 No.2885
CTRSPR(W) Regs	The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 No.3144
DFA Regs	The Discretionary Financial Assistance Regulations 2001 No.1167
LA(CR)CTI(E) Regs	Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012 No.444
LGFE(SP)O	Local Government Finance England (Substitution of Penalties) Order 2008 No.981
TCG Regs	The Taking Control of Goods Regulations 2013 No.1894
TCG(F) Regs	The Taking Control of Goods (Fees) Regulations 2014 No.1
VCCT(Amdt) Regs	The Valuation and Community Charge Tribunals (Amendment) Regulations 1993 No.292
VT(A)(E) Regs	The Valuation Tribunals (Amendment) (England) Regulations 2000 No.409
VTE(CTRA)(P) Regs	The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 No.2269

**Appendix 4: Abbreviations used in the notes**



VTE(CTRA)(P)(A) Regs	The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2013 No.465
VTENDRCT(E)(A) Regs	The Valuation Tribunal for England, Non-Domestic Rating and Council Tax (England) (Amendment) Regulations 2011 No.434
VTW Regs	The Valuation Tribunal for Wales Regulations 2010 No.713
VTW(W)(A) Regs	The Valuation Tribunal for Wales (Wales) (Amendment) Regulations 2013 No.547
WSSD(CUCLA)(S)O	The Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020 SSI No.4

**Other information**  
CTM Council Tax Manual

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